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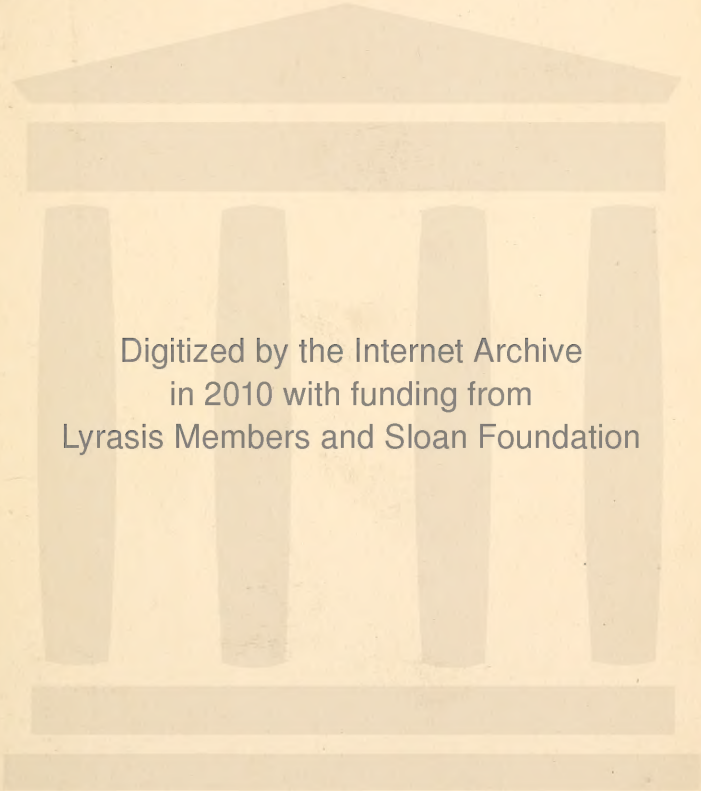

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THE CASUIST

A Collection of Cases in Moral and Pastoral Theology

VOLUME V

PREPARED AND EDITED

BY

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and

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PREFACE

The previous volumes of the CASUIST series have been so cordially welcomed by priests and students that it has been a pleasure to prepare and arrange this new volume for its readers. The analysis of moral problems is most useful for all engaged in the ministry. As teachers and directors of souls they are constantly called upon to give guidance and instruction concerning the way that leads to everlasting life. But moral principles, though luminous in themselves, are oftentimes obscured as to their application by complications of facts that hinder the practical judgment. To propose and discuss the difficult problems that thus arise in the pastoral life is one of the main purposes of Cases of Conscience.

Furthermore such concrete examples ought to be of great assistance in the elucidation of moral principles and the development of a ready and correct judgment in matters of conscience. Students of Moral Theology get a better grasp of the universal laws of their science when these are applied in particular instances. The practical illustration taken from the actual conditions that the student will later encounter gives added interest to the abstract study and assures it a firmer hold on the memory. But Cases of Conscience are especially valuable to the theological student as aids to the acquisition of that habit of mind which will enable him in forming and guiding consciences to apply surely and correctly the rules and laws whose mastery he has obtained.

Accurate and adequate solutions of moral cases, however, are not always easy; indeed, they often present a task that requires the greatest thought and diligence. Yet there is genuine satisfaction

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in the labor; the matter is so important that one can hope the efforts will yield some fruit.

Of the cases in the present volume the greater number has already appeared in print, chiefly in the HOMILETIC MONTHLY: these have been carefully revised and many have been re-written in whole or in part; the other cases are new. It has been the writer's aim to correct or complete the older cases whenever there was need on account of later legislation. He makes grateful acknowledgment to Very Rev. STANISLAUS WOYWOD, O.F.M., the distinguished Canonist and Moralist, for much valuable assistance.

The writer further has had in view the practical usefulness of the book for the daily work of the priest, and he has consequently excluded from its contents everything purely speculative and abstruse. For the same reason it has seemed advisable to arrange the cases according to the order generally given to the different tracts of Moral Theology. In this way it is hoped the book will prove most serviceable, whether to the priest in his study, or to the professor and student in the class-room.

The religious zeal of the clergy has been manifested in the popularity of the CASUIST series. With the wish that this new volume may likewise be of interest and profit, it is humbly dedicated to their service.

J. A. McHUGH, O.P.

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THE CASUIST

Vol. V

I. HABIT

Case.—Confessor A has a penitent who rather frequently has to accuse himself of certain solitary and grave sins. This penitent has tried for many years to overcome the temptation but without success. The habit in question was formed in early boyhood days and has grown upon him to such a degree that it is now, he claims, beyond his control. The temptation comes upon him with such suddenness and fury that, at least to his mind, he seems compelled to yield, and he is of the opinion that he would do so even though he knew with certainty that at the moment of gratification his soul would be lost.

Question.—Now, what is the confessor to do with such a case?

Solution.—To decide whether this penitent is guilty of grave sin each time he falls, one must consider whether his habit of sin is voluntary or involuntary.

(1). If the penitent desires to retain the evil habit it is clear that the resulting acts are of his own choice and that he sins gravely each time he yields to the temptation.

(2). If he does not positively will to continue the habit, but yet has not efficaciously rejected it, his guiltiness will depend on whether the habit was begun voluntarily or involuntarily.

(a). In the former hypothesis, the acts consequent on the habit are voluntary in their cause, since the penitent foresaw and willed

them, at least in a confused way, at the time he consciously contracted the vicious habit. He cannot decline responsibility on the ground that his will-power has been weakened, any more than a person who deliberately throws himself into a deep pit can excuse himself for not continuing a journey. (b). In the latter hypothesis, the voluntariness of the acts are much diminished. The sinful habit was contracted in boyhood days before its sinfulness or gravity was understood and it grew so powerful that the will seemed utterly enslaved. One must beware, however, of taking a lax view. Only when the force of habit is so strong as to unbalance the reason and to extort consent before a clear judgment is possible, may it be said that the act is not free and not imputable. Such cases are comparatively rare. The confessor will have to judge from the circumstances the extent to which the sinful habit has weakened the free-will and diminished the guilt of the penitent. He should remember, too, that even though the habit was involuntary in its origin, it may have become voluntary subsequently, if the duty of using proper means to combat the vice was knowingly neglected.

(3). If the penitent has formally retracted the habit and has employed means to conquer it, this circumstance greatly extenuates his guilt. But here again it is only when the habit produces a *gravis perturbatio mentis* that it takes away grave culpability.

The confessor should be slow to conclude that such a condition of mind exists, even though the penitent should protest ever so much his powerlessness to resist. This is the very explanation that self-deceived *consuetudinarii* often allege in their own favor. However, the confessor should use great gentleness along with prudence and firmness. The penitent should be so directed that on the one hand he will not feel that he is free from imputability, nor on the other hand that God is a tyrant and that there is no hope for

himself. He should be absolved as often as he presents himself with dispositions which the priest judges to be genuine and sufficient. Moreover he should be persistently exhorted not to become the slave of discouragement but to keep up his efforts despite his frequent relapses, and to use all means, natural and supernatural, which tend to lessen the severity of his temptations, and to strengthen the force of will-power. Especially should he be urged to commend himself to the Mercy of God.

II. COOPERATION

Wilhelmina, a widow with one child to support, ekes out a scanty living by keeping a notion store and renting rooms to a few lodgers. Juliana is a very liberal customer and purchases many things at the store of the widow. She has a son, a good fellow, but a little wild, who is in love with Alberta. He has tried to pay his address to the young lady at her home, but her parents will not permit him to do so. They have also forbidden Alberta to call at the house of her lover's parents. To avoid the difficulty, Joyce, the lover, hires a room in the house of Wilhelmina and there he receives the visits of his sweetheart. Wilhelmina is now scrupulous about the matter and wishes to know from her confessor whether she can continue to rent the room for this use.

Answer.—The confessor must first find out what effects are consequent upon these secret visits of Alberta to the room of her devoted Joyce. Are these visits the occasion of serious sin? Do they give serious scandal? The lovers may meet and yet have no temptation to sin; or they may sin. If the widow has moral certainty that her lodger uses the room for the purpose of sin, then she must refuse to let him have the room. If she does not so act, she is guilty of cooperation in his sin. If the secret meeting becomes known then scandal will inevitably follow, with the loss of reputation to both parties. However, Wilhelmina is not certain that any sinful action takes place; and no one knows of the meeting but herself. Besides, if she dismisses Joyce, she will have difficulty in renting the room. This she knows from experience, and it is a serious matter with her, for she earns scarcely enough to pay for

her own rent and support herself and child. Before compelling her to refuse the room to her lodger all these circumstances must be weighed. She fears likewise, and with good reason, that she will lose the trade of Juliana, which is a very considerable item in her battle for proper existence. If sin is committed, not even these circumstances will permit her to keep the room at the disposal of the young people. She must get rid of them. If they do not come together for evil purposes, but merely to see each other and spend a happy hour or two, and no scandal is the resultant, then we do not think that she is obliged to suffer the grave consequences alleged, but can continue to derive her revenue from the rental of the room. There is one thing certain: that is, Alberta is disobeying, if not the letter, at least the spirit, of the prohibition of her parents. Yet it is no part of the duty of the widow to force obedience from Alberta. In any case she cannot control Alberta on this point. So the widow is no determining factor in this disobedience. She is not to blame. In default of good reasons to the contrary we do not think it obligatory for Wilhelmina to dislodge the youthful schemer.

III. FORMAL AND MATERIAL COOPERATION

Case.—John, a public hack driver, declares, in confessing his sins, that he is in the habit of driving people to brothels. This he does at times on their simple request. At other times, in response to their demand if he knows of such places, he replies affirmatively, and drives them there. John argues that since such resorts are allowed to exist, it is not unlawful to drive his patrons to them, nor wrong to inform them of their existence and location; otherwise his business and income will suffer gravely, as others are prepared to do this work.

Questions:

1. What is formal, what is material cooperation?
2. What constitutes a grave cause sufficient to make material cooperation lawful?
3. What of the existence and the renting of houses to prostitutes?
4. Did John act rightly?
5. What is the confessor's duty?

Solution.—1. Formal cooperation is that by which we aid another in his sin, and consent to the malice of the sin. Material cooperation is the aid we give to the action of another, not as it is sinful, but precisely as it is a physical action. It is either: (1) immediate, if one take part in the sinful deed; or (2) mediate, if one performs acts that lead up to or follow the sin.

Formal cooperation is never lawful. It includes the consent of the will to the sin of another. It contains a two-fold malice: against charity and against the particular virtue violated.

Material cooperation is lawful if the two following conditions are present: (1) The action of the one cooperating must be good, or at least indifferent; (2) there must exist for his action a just cause, proportioned to the gravity of the sin, and the proximity of the cooperation.

2. What constitutes a grave cause in this matter depends on the estimation of prudent men. St. Alphonsus (Theol. Mor. Lib. II, No. 59) gives the following rules: The cause which permits material cooperation must be proportionately more serious and more weighty, (1) when the sin committed is graver; (2) when it is more probable that without your cooperation the other will not sin, or when the effect is more certain; (3) when your cooperation touches more proximately on the sin; (4) when you have less right to place the cooperating action; (5) when the sin is against justice, detrimental to a third party.

3. In large cities, in order to avoid greater evils, brothels are permitted by law, and according to a probable opinion it is morally lawful to rent houses for such purposes (Sabetti, No. 187). If, however, grave injury would thereby result to an otherwise respectable neighborhood, or if the location were such as to offer a greater opportunity for vice, such renting would not be permissible.

4. To answer the fourth question, we must determine the nature of John's cooperation. It does not appear that he cooperated formally, since he did not intend the evil involved. His cooperation, then, was only material. Further, it was not immediate, as it preceded the sins committed. Since, therefore, John's action of driving his "fares" was morally indifferent and since his livelihood depends on the good will of his patrons, it does not seem that he was guilty of serious sin. It is clear, though, that material cooperation is not

permissible without a sufficient reason. The first reason assigned by John for his course of action viz. that such places are allowed to exist, was not sufficient. It should be remarked also that if John's passengers would be unable to resort to the houses they seek without his assistance and information, his cooperation would be much more proximate than it is and the reason for it would have to be correspondingly much graver.

5. One of the reasons given for John's actions seems to be sufficiently grave to exempt him from mortal sin. The confessor should admonish him, however, of the danger that lies even in material cooperation and of the duty of avoiding it in future or of making it more remote, as far as this may be possible.

IV. DOUBT IN MATTERS OF FAITH

Case.—Adolf, a college student, mentions, in confession, that it appears to him that he has frequently sinned against faith. He says his faith is not strong, he is continually in a state of wavering, only his will to believe keeps him in the faith. The chief cause of his doubts is the attitude taken by so many men of science towards religion, some despising, others ignoring it. He often hears the remark that it is unworthy of a well-informed man to submit blindly to the truths of faith, such as the Catholic Church requires. These things increase the bewilderment that has taken possession of Adolf.

Question.—How should this penitent be treated?

Solution.—Adolf evidently is undergoing a period of stress. His faith which he learned at his mother's knee, and which he faithfully preserved in home surroundings, is now subjected to hard tests, in an atmosphere of unbelief. It is apparent that despite these temptations, he still appreciates the faith as his most precious gift; hence he feels impelled to seek help from the priest, who, besides being confessor, exercises also the sacred office of teacher, guide and comforter.

In dealing with this penitent there is not merely a question of solving all the various particular doubts that bewilder his reasoning, and that render difficult the practice of his faith. First of all, he must be plainly and clearly instructed in his religion, to correct or perfect his understanding of the same, to liberate him from unfounded fears, as well as to eliminate real perils of his losing the faith.

He is worried especially by the thought that though the certainty of faith as the Church teaches is the greatest possible, this certainty is lacking in him. What should he be told on this point? Without doubt the certainty of faith is supreme, because the motive of faith, namely the authority of God revealing the truth, is the foundation of the faith, and that means absolute certainty; and since the principle of faith is the supernatural light of grace, one who honestly seeks the truth will arrive, through the enlightenment of Divine grace, at the positive belief that God has made revelations to man, that Jesus has manifested Himself as the Son of God, and as the Saviour of the world, that He brought us the full truth, and is proclaiming the same through the teaching office of the Church; and, accepting the authority of God and of His Church, he will, with the help of Divine grace give to the revealed truths a consent that is above every doubt and voluntary wavering. Nevertheless, an involuntary doubt may arise at times in believing Christians, a suggestion of insecurity may insinuate itself. Faith is, after all, a virtue, and the act of faith a voluntary subjection to the truths of the faith, dictated by the will, since reason is not impelled by a direct evidence of the motives of faith to an act of faith. For this reason faith, like any other virtue, is subject to temptations. Insinuations by the spirit of untruth, and, especially, the various objections made by men of science against the faith, as also the widespread religious indifference, are apt to bewilder an inexperienced youth whose judgment has not yet matured.

This is the condition in which Adolf finds himself. He is worried and in his bewilderment imagines that his faith is already shipwrecked. Yet this does not seem to be the case. He wants to believe, as he affirms, and in his temptation he clings to the foundation of faith, the authority of God and of the Church; thus, despite

all the doubts that oppress him, he is still on firm ground, and may console himself with the knowledge that he is still in possession of the faith, and will so remain as long as he keeps his good will and makes zealous use of the necessary means for its preservation. Only when the will surrenders consciously to doubts, and entertains them voluntarily, does the virtue of faith vanish. Nevertheless, the state in which Adolf finds himself is not without its perils. For this reason it will be the confessor's task to protect him, by practical advice, against these dangers.

First of all, it cannot be sufficiently emphasized that faith is a virtue for which we must pray unceasingly. Many unbelievers, by painstaking inquiry, have approved the truth of the Catholic Church, without however being able to resolve upon accepting this truth. Only after they begin to offer up humble and fervent prayers do these difficulties disappear, and do they receive the strength to take the decisive step. On the other hand, the learned theologian may without continuous prayer for steadfastness in the faith drift far from the truth and be plunged in pernicious error. To prayer must be joined a chaste life. A life according to faith makes the possession of that faith sure. Indeed, the greater number of those who lose the precious gift of faith, became estranged from God through pride or immorality. "Many have done violence to their good conscience and suffered the shipwreck of their faith" says St. Paul, speaking of Christians in those days. Pride cannot dwell in harmony with the faith.

It is the language of pride that Adolf hears, when they tell him that it is unworthy of the cultured to believe something that one does not comprehend. This appeal to the self-respect of a talented, self-conscious youth, brought forward in the name of science, seldom fails of its harmful influence upon his faith. Yet it is not difficult

to prove to him the fallacy of this assertion. True, faith requires the submission of reason to truths which far exceed our conception. Faith in this sense is a sacrifice, nevertheless the Church does not really require the sacrifice of reason, but rather that of arrogance. To refuse acceptance of God's decrees, or to doubt them, must be regarded as an impertinent presumption. If an apprentice, while being initiated into the mysteries of an art by a clever master, would listen to the explanations with an incredulous shake of the head, and claim to know better, what would we think of such behavior? Now all of us, even the greatest scholars, are God's apprentices: the Lord God in His mercy has taken us into His school, in order to teach us those supernatural truths of life, that concern our temporal and eternal welfare. What, therefore, is more beseeming than that man should give ready submission to God and to His Church?

In order, then that Adolf may escape perils to the faith, he must be impressed with the great need of prayer and of regularly receiving the Sacraments as a means to preserve purity of life, and he must avoid bad company. It is a great error for Adolf to suppose that in matters of faith reason must submit blindly. The Catholic religion, whose foundation is the faith, is not merely a matter of sentiment, it is not a religion of emotions. Reason and free will must, the same as in the practice of other virtues, be used in the exercise of faith, indeed, more particularly than the other faculties. Adolf must admit that an impartial and serious scrutiny of the motives of faith is calculated to satisfy the longing for certainty on part of the reason, and that only superficiality, prejudice and wilful resistance against truths that are inconvenient for a corrupt mind, can deny the strength of these arguments. The existence of the Catholic Church, her history for near two thousand

years, the work of Divine Providence which in her is so abundantly evident, her victory over so many storms of persecution, the preservation of the purity of her teaching despite many assaults of the spirit of untruth, the glorious fruits of her sanctity in numberless servants of God, the wonderful works of charity ever present in the Catholic Church, all these must clearly demonstrate that this Church is the Divine Institution wherein we find truth and salvation. The study of Church history, also perusal of the lives of her saints and of her celebrated men, may be recommended to the doubter as an effective means for strengthening the faith. The numerous models of heroic virtues, of whom we possess so many in the Catholic Church, grant us an insight into the blessed workings of the Church, they fortify our faith and make us rejoice at being a child of this Church. Students are expected to accept the statements of eminent teachers as infallible truth; hence the words *jurare in verba magistri.* Yet even the most learned are not infallible, least of all in matters of religion. The overestimation of scientists and of their authority, to which Adolf is addicted, should be toned down by pointing out their incompetence in religious questions. The scientist may be an authority in his special science, but that does not qualify him to speak with authority on questions of religion, especially, as so often happens, if the fundamental truths of the Catholic religion are not even fully known to him. In matters of religion Adolf must seek elucidation where alone it can safely be found, in the Teaching Church, whose infallible decisions he may follow all through life as his never-failing lode-star. Finally he should be urged to associate with Catholic students, join Catholic organizations, thus to fortify his Catholic consciousness, and induce an interest in matters pertaining to his faith.

V. COMMUNICATIO IN SACRIS ILLICITA?

Case.—Early one Sunday morning in summer time the pastor of a church at a sea resort was memorizing a sermon for the parish Mass when a Protestant minister called and asked for the loan of a Bible, saying he had only arrived the evening before, had mislaid his copy and did not know where else he might procure one for his morning service. After some hesitation our pastor gave this minister a Bible, but hardly had the latter disappeared when the pastor became uneasy. *Communicatio in sacris cum acatholicis, cooperatio ad peccatum,* and other chapters of Church law and moral theology darted through his head. Gradually he became easier in his conscience, as there could be no question of a sin, because he had acted *bona fide,* Holy Writ was the source of faith for Protestant and Catholic alike, etc.

Question.—Quid ad casum?

Solution.—Our pastor's uneasiness, even apart from the fact that he had acted completely *cum bona fide,* was utterly uncalled for. But have we not here a striking example of *communicatio in sacris cum acatholicis activa?* We answer: Granted! But such active *communicatio* is not always a sin! It is only forbidden where it means an appreciation or recognition of a non-Catholic worship (cf. Aichner-Friedl, *Compendium juris ecclesiastici* 9, p. 156) or where scandal or even apostasy might be feared.

Nothing of all this is present in our case. The fact that a Catholic priest lends a Bible to a Protestant for the purpose of holding Divine worship, is no appreciation or recognition of that worship. Nor was there any scandal or apostasy, or a *subversio in fide et moribus.*

VI. FORGIVING INJURIES

Case.—Margaret, a rich maiden aunt, had a special predilection for Robert, one of five nephews. She was accustomed to show this feeling in various ways, particularly by many extraordinary gifts showered upon her favorite. Recently Robert incurred the displeasure of his aunt by contracting marriage against her expressed wish. Since then she has not given any gifts, she has refused him admittance to her house, and has told his brothers that she would leave him no inheritance in her will. She has persevered in this conduct despite the efforts of her confessor. He intends to refuse her absolution in future.

Question.—Is he justified?

Answer.—All Christians are well aware of the law of charity as imposed by Christ and know its binding force. It obliges us to succor our neighbor in his necessities when we can do so—it likewise obliges us to help our enemies under the same conditions. Moreover, we are bound to show even our enemies the common signs of charity, though these may vary, and do vary with time, country, custom, etc. To neglect these common signs of charity would be a violation of the law which compels us to love our enemies. This would be a mortal or a venial sin, according to circumstances, *i. e.,* if the matter is not serious or if some grave cause tempers the action, the sin committed would not be a grievous one. We must, therefore, examine the motive of Margaret's aversion. If she objected to the marriage because it brought disgrace upon her family, by reason of the condition or of the lax morality of Robert's bride, she cannot be said to have violated the law of

charity. The grief that would be caused by her nephew's miserable action would fully justify her in refusing even the common ordinary signs of affection, at least for the time being. Even if such treatment were to persist for a very long time, we do not think that under such provocation an affectionate aunt could be held to be guilty of sin. But if the motive in the case is hatred based on disobedience, then, of course, Margaret cannot justify her conduct, there would then be a clear violation of God's great law of charity. We must add to this that her attitude would be scandalous. No obedience was due in the matter, and in the supposition no injury was done either to herself or her family, consequently no reason exists for the hatred which in the given instance is exceedingly sinful. She does no wrong in ceasing to bestow her gifts; these were gratuitous and depended on the good will of the giver; but she must show her nephew the common signs of charity. Unless she rids herself of her hatred she proves herself unworthy of absolution. However, she may have been moved by disappointment or by sentimental sensitiveness, rather than by hatred, she may have wished him to marry a bride of her own selection, or to have remained with her during her old age. Here she is free to deprive him of the customary extraordinary signs of affection. But she must give him what he is entitled to, viz., the ordinary signs, the same as she gives to his brothers, or his cousins, etc. Her attitude is unreasonable and reflects her own selfishness, giving evidence of wounded pride. Time will effect a cure, and therefore the confessor need not worry. Excluding real theological *odium* and scandal, he may in this last instance continue to give absolution.

VII. ENVY

Case.—Aegidius, a poor man, is much inclined to sadness at the thought that the rich are favored above his class not only temporally, but even spiritually, since they are better able to give alms and may thus acquire greater merits in this life and have more suffrages offered for them after death.

Questions:

1. Are Aegidius' dispositions sinful?
2. What should be thought of his opinions?

Solution:

1. Envy is a sorrow over the good fortune of our neighbor inasmuch as we consider that it surpasses our own good. Such feeling is of course out of harmony with the law of charity, which bids us to love our neighbor as ourselves and to rejoice at his prosperity. Therefore envy is sinful and, if fully deliberate, a mortal sin. Envy of the spiritual good of another is a most grievous crime, and is numbered as one of the sins against the Holy Ghost.

Quite different from envy is emulation or zeal, which causes us to grieve at our neighbor's good, not because he possesses it, but because we ourselves are wanting in that good. Such sadness, if its object be moral goodness or righteousness, is virtuous and praiseworthy: "Let us consider one another to provoke unto charity and good works" (Heb., x, 24; cfr. 1 Cor., xiv, 1). But if it be concerned with temporal things only, emulation is or is not sinful according to circumstances.

Temporal possessions may assist a person to love God. It is not wrong, then, to desire such advantages, provided avarice, covet-

ousness and impatience be excluded. As Aegidius is a spiritually minded man, it is not likely that he begrudges his neighbor the favors with which God has blessed him; he merely wishes that he enjoyed certain opportunities for good that others have. Such a wish springs not from envy, but from zeal. If, however, some slight movements of envy are mingled with his anxiety about his soul's welfare, his inadvertence and ignorance will excuse him from serious fault.

2. For it is not true that riches are usually an advantage in the supernatural order. An abundance of this world's goods does not generally lead its possessor towards God, but it does make him more responsible before God. The rich are deserving of compassion rather than envy, if we view matters in the light of faith. Hence it is not the rich, but the poor whom our Lord calls blessed. While Aegidius is not able to give liberal alms, there is much that he can do for his neighbor. The widow's mite was worth more in our Lord's eyes than the great gifts of the Pharisees. Merit and reward are proportioned to internal charity rather than to the actual relief that is effected.

As to the greater number of Masses that the rich can have offered for the repose of their souls and their speedier liberation from Purgatory, Aegidius should remember: (1) God is the Supreme Master of His creatures, and if it pleases Him to grant to one an easier way to salvation than to another, the latter has no right to complain; for the graces of God are free gifts of His bounty, they are given sufficiently to all, and each one will be judged according to his opportunities and merits. (2) If the rich are enabled to obtain greater suffrages after death, the poor by patiently bearing their difficulties during life have made a satisfaction that acquits the temporal punishment due to sin more quickly than do

the sufferings of Purgatory. (3) The sacrifice of the Mass is profitably offered for the dead and its fruits are applied to him for whom it was offered, if there be no obstacle. But the remission of the temporal punishment of sin depends upon the Divine mercy and liberality. Hence it may happen that a great portion of the fruit of Masses and other suffrages that are offered for the soul of one person may be applied to another whose life on earth made him more deserving of mercy. (4) The poor man has more security of salvation and the opportunity for greater merit and a higher reward. These infinitely surpass the advantages of his wealthy neighbor, even though the latter should be liberated sooner from Purgatory.

VIII. WHEN IS OWNERSHIP TRANSFERRED?

Case.—A buys a horse from B for $300. He pays the money at once, but makes no agreement as to delivery of the horse. He allows the horse to remain in the stables of B. During the following night the horse died.

Question. 1. Who bears the loss? 2. Was ownership transferred when the buyer paid the money; or was actual delivery required in order to transfer ownership in the case?

Solution.—All the elements required for a genuine contract are here present and hence the contract entered into by A and B is valid. When A paid over to B the sum agreed upon he acquitted himself of his part of the contract. But the question arises did B meet his obligations? If he relinquished his claim to the horse, so that A was free to remove the animal to his own stables, then it can be said that B did all that was required of him in strict justice. If B placed no objection to the removal of the horse by A, then he must have acknowledged the ownership of A over the horse. The fact that the horse was de facto not removed does not alter the case, as it did not deprive A of his right to the horse acquired by the payment of the $300. Had he so desired he could have removed his property at any time, and in not doing so he assumed all responsibility in connection with his bargain. If there had been any agreement on the point of delivery the question at issue would have to be decided according to that agreement. But from the statement of the case as given above, there was no such agreement. Hence it can be said that A assumed ownership when he paid down his money; that B did not contest this ownership, as he placed no

impediment to the exercise of proprietorship on the part of A, and hence in every respect the horse was as much under the dominion of A as if he had placed him in his own stable. B kept the animal in his stable as a matter of convenience for A, and in so doing he cannot be held to have assumed any responsibility for the well-being of A's property. If A had not paid the money, then as long as the object of the bargain was under the control of B, all responsibility was his: but as soon as A deposited the purchase money then he became possessed of the horse in question. Among retail horse dealers it is an admitted principle that transportation is at the risk of the new owner unless otherwise specified in the contract or a custom to the contrary exists. This exception is made by a few only of the very largest dealers. As, therefore, the horse was in the stable of B as a convenience for A, the burden of loss must rest upon A. If B sold this horse to A in bad faith; if the horse was diseased when sold and died in consequence of that disease, then B is bound to restitution. If the horse died as a result of maltreatment or of culpable negligence on the part of B, then surely A is entitled to a return of his $300. In private sales, however, custom (which here has the force of an agreement) determines that ownership begins only with the delivery of the horse, but in this case the horse is not paid for till he has been delivered. The decision in the case is that A was the owner and must stand the loss.

IX. THE DUTY TO PRESERVE ONE'S LIFE

Case.—Father John has a penitent, David, the son of a widowed mother and a man in ordinary circumstances of life, who has developed consumption. David is in very poor health at present, and has been told by many reputable physicians, who have carefully examined him, that he cannot live more than one year unless he remove himself from this climate and betake himself to the Rocky Mountains, where, if his health improves, he would have to stay for four or five years. There is no certainty, however, that even there he will recover his shattered health. Now David is not inclined to follow the advice of the doctors. He feels that it would be imposing too great a hardship on himself and upon his mother. He dreads the life he will be compelled to lead in the mountains, and declares that he prefers to remain, and die, if must be, at home, where he can receive some consolation from his parent, and where he can be of help to her.

Question.—Is there any obligation on his part to go to the mountains? Does he commit sin by not going?

Solution.—The solution of this case must depend upon circumstances. Of course, it goes without saying that we are obliged to preserve the life that God has given us. We are not free to do anything that will shorten our lives directly. But this is only a general principle which arises from the binding force of the Fifth Commandment. In practice it may be modified by many conditions. When we claim that we are obliged in conscience to use the means necessary to the preservation of life, we must be held to be referring only to the *ordinary* means the use of which are required for the maintenance of God-given life. To exemplify this, we assert that

a man is bound in conscience to take food, to take medicines, to take fresh air, exercise, etc., because these are the ordinary means which enable him to conserve his life. It follows that a man who would when sick refuse all medical aid, and who from prejudice or obstinacy would allow himself to pass out of this world rather than consult or follow the advice of clinical experts, would be guilty of sin. But we are not obliged by any law of God to use *extraordinary* means. Such means would be those that entail very great expense, very great pain, or very great hardship. Should one's life be necessary for the good of society or of the community, then extraordinary means become ordinary, and such a one is bound to use all means at his disposal to preserve his life. Do not forget then that what is extraordinary for one man is ordinary for another, and that what is ordinary under one set of circumstances may be extraordinary under another. It is our view that the conditions under which David labors, and which beget in him a repugnance to a change of climate and a long residence in the mountains, with consequent separation from home and his mother, may rightly be looked upon as out of the ordinary. Therefore we hold that he is not obliged to submit himself to them, and consequently he does not sin by refusing to accept the *dictum* of his physician. He may be *counselled* to go, but he cannot be compelled to do so under pain of sin. The hardship, the expense, the mental pain, the loneliness and the fact that after all he may not ultimately recover, all these conspire to make the remedy an extraordinary one.

X. THE NECESSITY OF SAFEGUARDING LIFE

Case.—Rufus, in love with Leonore, and finding his affection reciprocated, proposes marriage to the young lady. She freely admits that she would accept his offer were it not for one seemingly insuperable difficulty. Rufus is deformed by the presence of a tumor which she considers not only unsightly but even dangerous. The distressed lover pleads his cause and finally wins consent under condition of the removal of the deformity. Rufus then hastens to a surgeon, who assures him that the offending excrescence can be removed by the knife, but not without fear of danger to life. He consents to the operation. In preparation for the ordeal he approaches the Sacrament of Penance and there his confessor forbids the operation on the ground that it would be a violation of God's Law prohibiting the endangering of one's life. He persists and is sent away without absolution.

Question.—Did the confessor have the right view of the case?

Solution.—While it is never lawful to do anything that is equivalently suicide, it is lawful to do that which is indifferent *in se* though it involves the possibility of death, provided (a) we seek some *immediate* good effect, (b) our intention is not to cause death, and (c) there exists a sufficient reason to allow the evil that may possibly follow from the doing of such an action. Where no grave cause sanctions the doing of the action in question, the act is highly unlawful, it is grievously sinful. Now a legitimate cause includes an action involving the production of good not only for the community, but may even extend to the good of the individual. Where then a substantially weighty benefit accrues to the members of society from the jeopardizing of human life, the seeking of that good is entirely

licit. Where, too, the aforesaid benefit comes to a single member of the community, that good may be sought even at the risk of life to the individual in question. This holds with the proviso that the risk involved be not too great, and hence that there be some reasonable proportion between the good to be accomplished and the risk to be assumed. Where on the other hand there is no adequate reason for the risk, no sufficient good to the individual or to the community, then no one would be allowed to place himself in the proximate danger of death, or in the probable danger of such an evil.

Applying the principles just stated to the proposed case, we must determine whether there exists *sufficient reason* for the induction of the peril that is feared on the part of the deformed Rufus. In the determination of this question we must find out how great the risk is that he is willing to run. Is it great or negligible? Is it merely a possible danger, or is it gravely probable? Rufus is not concerned about the improvement to his personal appearance except in as far as it will help him to obtain Leonore as his wife. This he considers a great good for his life and no doubt we can admit the force of his reasoning in the matter, provided the risk he runs is not out of proportion to that universally accepted good. The surgeon whom he consulted has informed him that there is some danger. However we must bear in mind that modern methods of surgery, combined with the great skill of modern surgeons, have certainly and materially reduced the danger at one time attendant upon surgical operations. So that it is safe to conclude that operations formerly full of danger are now permissible, because of the lack of that danger. The death-rate to-day following operations is hardly more than two per cent. This is so small that it can safely be neglected. This would be our view of the case before

us. The danger to the patient would bear no undue proportion to the good that he hopes for from marriage with Leonore. Hence we would admit that he has sufficient reason to permit of his undergoing the operation to remove the impediment to his desired marriage. It would be a serious hardship to the community to prohibit such operations, particularly in cases where, as in the present, the good to be effected far outweighs the concomitant danger, especially in cases where the danger is more possible than probable, more imaginary than real. The confessor did not give a proper decision in the case. He should have absolved and encouraged, not discouraged his already distressed penitent.

XI. A CRIMINAL CONDEMNED TO DEATH BIDDEN TO EXECUTE HIMSELF

Case.—A noted criminal in the West was convicted of murder in the first degree and has been sentenced to death. In sentencing him the Court gave the doomed man the alternative of dying by his own hand on a fixed day, the method to be selected by the criminal himself.

Question.—Is this not suicide? If so, is it not forbidden by the law of the country and the law of God?

Solution.—It is never lawful directly and intentionally to take one's own life. To do so would be a grave violation of the law of charity which obliges one to love his body and soul in the proper way and to the proper degree. It would likewise be a serious infraction of the virtue of justice, for by self-destruction we are depriving God of what is His, and the State of what belongs to it, viz., the lives of its citizens. Beyond doubt the State acts properly in putting to death criminals who have been duly condemned according to the just laws of the land. But does this involve a right on the part of a judge to order a criminal so condemned to put himself to death? We know that this has been a long-standing practice among Eastern nations. Such a practice cannot be justified in conscience. Hence we find theologians very decided in declaring that a criminal ordered by the State to put an end to his own life is not bound to obey such a command. They consider that obedience in the given case would constitute grave disobedience to the divine law as expressed in the precept "thou shalt not kill." Moreover, in such an action the dictates of the natural law would be set at naught, for nature abhors self-destruction as something in-

human and cruel, even when brought about at the command of lawful civil authority; such authority does not extend to the act of self-destruction.

As to the main question involved in the case, viz., whether a justly condemned criminal can with a safe conscience take advantage of the opportunity offered by the State and choose death at his own hands in a manner less painful, less dishonorable, and therefore less revolting to human nature, theologians are not agreed. The common opinion seems to be that a criminal is not at liberty to effect his own death, moved by reasons given above, for he is directly effecting something that is intrinsically evil and that at the same time is abhorrent to nature, a something, therefore, never to be countenanced. If, they say, a man is never justified in executing capital punishment upon his father or his children, by reason of the demands of the law of charity, so likewise is he forbidden by the same law and with greater stringency to execute himself at the behest or sufferance of the State. (Lessius, St. Thomas, Bus. Suar. Soto et alii apud St. Alphonsum de precepto V, No. 369.)

Other theologians assert that one justly condemned can with the permission of the State execute himself without breaking the law of God or doing violence to the love due himself. (Genicot, Vazquez, Bon, Elbel et alii.) "If," it is argued, "a criminal can open his mouth and swallow the poison given him by his executioner, why cannot he take it from his own hands? What difference does it make whether he or someone else pours out the poison, as long as no further delay is vouchsafed? Just this difference, that there is less horror in taking the fatal draught from his own hands." (Franc, Victoria.) Again, if the judge can justly commit the execution of the sentence to a stranger, he can certainly com-

mit it to the criminal himself. In executing himself he is not taking the life of an innocent man, nor acting by his own authority (Vide Less. lib 2, 19, nn. 25, 26), nor without sanction of the law. Hence he is not disposing unjustly of what belongs to God and to the State, and is exercising the virtue of charity towards himself by choosing an easier death in preference to a more cruel one; at least one less revolting to his own sensibilities. It is evident, then, that the man whose life is forfeit to the State can follow either of the opinions given above with a safe conscience.

XII. JUSTIFIED INJURY OF THE NEIGHBOR, OR, VIR NOCENS IURE SUO UTENDO

Case.—Antonius notices that his meadow is after every heavy rain storm covered with sand and silt. In order to avoid this, there is no other means but to erect, on his own ground, a protecting dam.

Question.—May he do this, and does he not thereby sin against justice, or at least against charity, if by doing this the injury will be diverted to his neighbor Campanus?

Solution.—1. In answering this question we must point out, before all, that cases of this kind are usually taken into a court of law. Should Campanus therefore have recourse to the law, then of course Antonius will have to submit to the court's decision. But if we leave the court's verdict out of consideration, and consider the matter as a case of conscience, we find it duly dealt with by the Casuists. The *Casus Conscientiae* of Gury treat our case as follows:

An teneatur ad restitutionem, qui alteri nocet ponendo causam indifferentem vel iustam? Respondeo: Negative, si causa posita iusta sit ex parte agentis, quia utitur iure suo nec agit animo nocendi alteri, nec proinde ius illius ullum laedit, licet forte eius damnum praeviderit. . . . Sic peccas contra iustitiam avertendo aquam non tibi nocivam, si alteri nocere debeat. According to this, Antonius would not sin against *justice,* if on his own grounds he erected a protecting dam, though he foresaw that this would cause injury to his neighbor unless the latter made use of the same means of protection; but he would sin against *charity,* as Gury further remarks, if he intended to harm his neighbor, took pleasure in it, or neglected to warn Campanus of the injury threatening him when

he might hope thus to avert the injury. *"Non peccat contra iustitiam, qui avertit torrentem sibi nocivum, etiamsi intendat alteri nocere vel de dammo praeviso gaudeat—quia intentio prava nequit facere iniustum, quod de se iustum est."*

2. In this connection we would remark: The prospective bad effect of an act is not to be regarded as voluntary *in causa,* and, therefore, cannot be accounted as a sin against justice or charity, or even as a sin at all, if there is no obligation to omit the action from which one foresees a bad effect.

3. The action which one undertakes must according to its object be a good or an indifferent one. The prospective bad effect must not be willed or intended; it must be joined to the good action *praeter intentionem,* not be the result of a bad additional act. Finally, one must have a sufficiently important reason for performing the proposed act to which prospectively *praeter intentionem* a bad effect is joined. As an illustration we remind of the case of a physician, or a priest, who visits a patient ill with an infectious disease, although he foresees that this visit may have a bad effect upon his health, or the case of a judge or lawyer who at times must deal with matters which will produce violent temptations.

4. Let us apply this to our case and we find that there will be no sin against either justice or charity, in the erecting of a dam by Antonius upon his own grounds. He has every right to do so. His intention in so doing is a good one; he wants to protect himself from damage. Of course he perceives that this dam, besides being a good thing for him, will be a bad one for his neighbor; however, the good effect which the protecting dam has for him does not originate in the bad effect it will have for his neighbor. Both effects arise from the same act, which according to object and intention is a good one, and the bad effect is not intentional on

Antonius' part, it happens *praeter intentionem.* In all these premises there is to be found nothing sinful, the only question is whether Antonius is not obliged to omit the erection of a dam in order to avoid injury to Campanus. The reason why Antonius wants to erect a dam is a very important one, so that in this regard he is not in duty bound to arrest proceedings that Campanus may not be harmed; for there is no obligation, unless one is *ex officio* comissioned with preventing injury of the neighbor, to prevent to one's own injury a prospective injury in equal goods to the neighbor. The damage in this way resulting is to be considered as *effectus non intentus et per accidens secutus.*

XIII. RIDING IN CARS WITHOUT PAYING FARE

Case.—Paul, a student, makes it a practice to escape the paying of car-fares whenever he can, and even uses various tricks to evade the attention of conductors.

He claims that he may do this with a good conscience. First, he says, it is not the passenger's business to look out for the pecuniary advantage of the company; this is the conductor's affair, who is hired and paid to collect fares, and it is the conductor's business to see that every passenger pays. Moreover, Paul is of the opinion that the company suffers no real injury from occasionally carrying a "deadhead" passenger, because no additional expense is incurred by the company; hence he is not cheating the company.

Questions:

1. Is Paul's action lawful?
2. Is he obliged to make restitution and how may this be best accomplished?

Solution:

1. Paul is wrong in this practice. The reasons he adduces in support of it are false and without validity. It is of course the conductor's duty to look out for the company's interests, and for this purpose to keep count of the passengers as far as it is possible in respect to their large number and frequent change. But this duty of the employee does not in the least excuse the passenger from his obligation. It is an essential principle of commutative justice that in the case of a tacit agreement, which manifestly exists here, a certain performance of the one party (carrying the passenger to a certain distance by the trolley-car) conditions a reciprocal performance on the other party (payment of fare). Since Paul benefits himself by

using the opportunity of travel, the company has *eo ipso* a claim upon his fare. Paul's assertion, that the company is entitled to the fare only if the conductor makes positive demand for it, and that otherwise he is permitted to ride free, is absolutely unfounded. On the contrary, the fact that the companies despite heavy traffic place only one conductor in a car indicates that for getting their fares they trust to an extent in the honor of the public. Moreover, the matter of common decency should be sufficient inducement to pay one's way, and to avoid the appearance of trying to cheat the conductor.

The second excuse advanced by Paul is no more valid than the first. Paul claims that he has not injured the company, because on his account there was no additional expenditure for coal or electricity. But was not the company deprived of rightful income? What would be the result if other passengers would act on the same principle as Paul?

2. From the above it is plain that Paul is obliged to make restitution, and this not merely if he was aware of the injustice of his actions, but even if he was under the impression that his action was permissible and not sinful. It can not be objected that according to the teaching of moralists one is liable to restitution only when he has been guilty before God (*theologice culpabilis*). Here it is not a question of injury that only harms the neighbor and does not benefit the perpetrator (cf. Noldin, n. 419): Paul has by his acts so to speak "become richer" (*ditior factus est;* cf. Noldin, n. 449, *l. c.*) or, more exactly, he is still in possession of the fares to which the railroad company has every legal right. Therefore he must be dealt with as a man in *bona fide* possession of the property of others. There is not the slightest reason, unless actually outlawed on account of time, why the original obligation of paying

the fare has ceased to exist; it exists at present and presses for fulfilment.

But how may Paul carry out this obligation without attracting attention to his unlawful action? The easiest way would be to purchase a corresponding number of tickets and to destroy them (burning them, for instance). In this way complete restitution would certainly be made.

XIV. THE WIFE AND CHILDREN OF A THIEF

Case.—Sempronius brings home stolen goods, also money realized from the sale of stolen goods. At first his wife objected strongly to this, but the husband would not desist from stealing, and ordered his wife to use the fruits of his thefts for the support of the family, which she did. Now the man has died, without leaving anything of value.

Questions:

1. May wife and children accept their support from a husband and father who is a thief?

2. Are wife and children obliged to make restitution if later they acquire property?

Solution.—The case before us is one of cooperation in the sin of another, in an injustice, of which he was the perpetrator. Cooperation is either *formal* or *material,* according as one shares the sinful intention of the perpetrator and therefore assists in his sin, or does not share the sinful intention, but for some reason participates in the act. Further, we distinguish *direct* and *indirect* cooperation; the former exists when one actually shares in the performance of sin, the latter when one only prepares the way or offers the means for the sinful need. The *formal* cooperation in sin is never allowed, the *material* cooperation may, for a relatively important reason (*causa proportionate gravis*), be allowed, and then exonerates from sin as well as from the obligation of restitution. A *direct* cooperation in sin as a rule cannot be excused; an *indirect* and remote cooperation may for weighty reasons be excused. The reason for this is that direct participation in the sinful act is generally not possible unless one has agreed to the sin itself; moreover,

direct participation, as a rule, is not an indifferent action since one commits the deed with the intention that it be done; for instance, if one helps to kill or maim another then he assists because he has decided to do so for some motive, be it hatred, revenge, or self-preservation, and for his own reasons he intends that the victim be killed or maimed. Hence in regard to *direct* participation in causing injury, authors distinguish the different kinds of goods and say: 1. *quoad damnum vitae,* i. e., the unjust killing of a fellow-being; direct cooperation in such an act is never allowed, not even in danger of one's own life: 2. *quoad damnum membrorum,* the maiming of important limbs, is likewise not allowed, not even in fear of death, unless cooperation in such mutilation would save the victim's life; for in this case he would by the lesser evil be spared the greater one; 3. *quoad damnum fortunae,* an injury to property, may be excused under three conditions where grave fear is present, namely: (a) if the cooperator himself can and will make good the loss; (b) if a serious injury would be done even without the cooperation, and would be accomplished by the chief perpetrator, for then the position of the injured person would be made no worse by the cooperation; (c) when the injury is only trivial, one may cooperate in an injury *ex gravissimo metu,* in fear of death, even if one neither can nor will make restitution. If, however, one's cooperation is an active cause of the injury, and one cooperates only in order to protect oneself from loss of property, then one is not allowed to cooperate without assuming the duty of restitution (S. Alph. *L.* IV. 571.) or, as St. Alphonsus formulates the principle: it is not permitted to cooperate directly in injuring our neighbor in order to avert our own loss of property of the same order if we have not the intention of making restitution; but it is allowable in order to avert an injury of a higher order, for instance

death, mutilation, grave dishonor. A more remote cooperation may be permitted, for weighty reasons, in order to avert an equally grievous injury to oneself (Konings; *Theol. Mor. n.* 772; Aertnys, *Theol. M. n.* 330).

St. Alphonsus states (*l. c.*) the reason why even a direct cooperation in injury to property may be allowed in the stated cases: To appropriate or damage property of others is a sin of injustice *invito domino;* here however the *dominus* is not *rationabiliter invitus.*

Now to consider our case, we have to distinguish (1) The stolen articles and the money they brought; (2) the mother and the children; (3) participation in the theft (*participatio in actione injusta*) and participation in the stolen goods (*participatio in praeda*) and there will follow these answers to our questions:

1. It is permissible to take for the support of life money obtained from the sale of stolen property, for the wife absolutely so, and for the children if they cannot support themselves in any other way. For this money belongs to the thief, who for the support of his wife and children is under the same obligation as for restitution (S. Alphonsus, *L.* 4, *n.* 695; *H. A. tr.* 10, *n.* 115). The same may be done by the children if they have means of their own, but by their labor for the family earn as much as they receive from the thief, for if they accept only as much as they earn they do not involve the thief in greater difficulty to make restitution (Konings, 707, *qu.* 3).

It is not permitted to the wife and children to use stolen property, unless they are in most extreme need (*necessitas extrema* or *quasi extrema*); for the stolen articles still belong to another (*praeda*) and the *participatio in praeda* is only permitted in *necessitate extrema* or *quasi extrema.* But if the wife against her will was compelled,

by threats, to employ the articles in the household, then she sins neither by participation in the theft itself—for her participation is only very remote and is permissible for sufficient reasons—nor through participation in the stolen articles themselves, provided she had the intention to make restitution; for her participation then only means that she retains the matter and does not return it (Konings, *l. c.;* Berardi, *Praxis Confess., n.* 257). And I hold this view to be right even if the wife does not know how she ever can make restitution, or is certain that she can not. Of course the wife must save the ill-gotten property as much as possible, and make an effort to render final restitution possible.

2. As regards the obligation of restitution, (1) on account of the money derived from the stolen property, the wife, and under the given conditions the children too, are not obliged to make restitution, neither *ratione rei acceptae,* nor *ratione acceptionis;* for they have not wronged anybody.

(2) As regards the part of the stolen property used for themselves they are obliged to make restitution unless it was used to relieve extreme want. The amount of restitution they are obliged to make must be proportionate: (a) to the extent in which they unjustly, effectively and sinfully participated in the theft; (b) to the extent in which they partook of what was stolen, even if they did not sin by employing the articles for their own use.

XV. RESTITUTION BY POSSESSOR IN GOOD FAITH

Case.—John received from Paul the present of a horse, which he afterwards sold to Peter for $250. A few days after the sale the horse died a natural death. John then learned that the horse he had received as a present had been stolen from Henry. Now John wishes to know what he is to do with the $250.

Questions:

1. Is John a possessor in good, bad, or doubtful faith?
2. What are the principles of restitution for a possessor such as John is?
3. Is John obliged to restitution, and to whom?

Solution:

1. In the case John was evidently a possessor in good faith. He did not know the horse he sold was stolen property until after the death of the horse, and he is now willing to restore the $250 to the rightful owner.

2. (1) The person in good faith, just as soon as he learns that he is retaining the property of another, is obliged to restore it in its actual condition; that is, in whole or in part, as the case may be, together with whatever emolument he may have derived therefrom: *id in quo ditior factus est.*

(2) If the property of another person perishes while held by a possessor in good faith, and he has not enriched himself thereby, he is obliged to nothing: *res perit domino.*

(3) If the person in good faith sells the property of another to a third party, and the rightful owner later claims it from this third party, *in casu evictionis,* the seller is obliged to restore to this third party the amount received.

Those principles suppose, of course, that there had been no legitimate prescription in the case.

3. (1) The common opinion of the theologians is that John is obliged to restitution.

a. The more probable opinion holds that the $250 is to be restored to Henry, the rightful owner of the horse, because John has enriched himself by $250 at the expense of Henry.

b. Others hold that John must restore the $250 to Peter, the purchaser, because the sale was invalid.

(2) Some modern theologians (Bucceroni, Genicot, Noldin) hold that John is not bound to restitution at all, because neither Henry the owner nor Peter the purchaser can be said to have a right to the $250. Not Henry, because "res perit domino"; not Peter, because outside of the case of eviction, the seller acquires the full and entire dominion of the amount received. Consequently, "in dubio melior est conditio possidentis."

The last opinion should be held as at least extrinsically probable, because of the authority of the theologians who teach it, and consequently John may be freed from all obligation to restitution.

XVI. RESTITUTION IN THE CASE OF AN INSURANCE AGENT

Case.—Cajus, a reckless young man, is induced by a solicitor of an insurance company to take a $2,000 insurance policy on an endowment plan ten years straight—that is, he has to make ten annual payments, after which he is entitled to $2,000. If he fails to make the second payment when it becomes due, and dies, his estate is entitled to nothing. If he fails to make the third payment when it becomes due, supposing he has made the second payment, his estate gets $400. The young man, a dissipated character, is not inclined to make the second payment. The solicitor, however, by extraordinary efforts, prevails upon him to make the second payment. The third payment he refuses absolutely. Shortly after the refusal he dies. Some time before his death the insurance company inaugurated an automatic extension plan, by which Cajus would be entitled for a period of eight years to the full amount of the policy—$2,000. Cajus and the solicitor, however, had no knowledge of this new arrangement.

If his death had occurred after the eight years he would be entitled to $400—always on the supposition that he made the second payment—which he did. As Cajus died before the expiration of the eight years, the company sends check of $2,000 to the solicitor to be paid to the estate of the deceased. The solicitor, believing himself entitled to a special remuneration for his extraordinary efforts to induce Cajus to make a second payment, gives $800 to the estate of Cajus and retains $1,200 for himself. The estate is highly gratified, thinking itself entitled only to $400, according to the original contract, and not being aware of the automatic extension clause. Now the solicitor is tormented by scruples and reveals

to the manager of the insurance company his transactions with the estate of Cajus. The management tells him to keep the amount of $1,200, since the estate of Cajus received double the amount of the original contract. Nevertheless, the solicitor is in doubt whether he may accept the answer of the management and honestly retain the $1,200, and now seeks a theological solution of the difficulty.

Solution.—The solution of the above case depends upon the right application of the ordinary principles laid down by all moral theologians. No one has a right to claim as his own that which belongs to another. The only point, therefore, to be decided is, who is the actual master of the money in question? Is the agent the owner, or are the heirs the owners? The agent claims it as his own, on the grounds that had he not prevailed upon the insured to continue as a member of the company, by the payment of the second annual premium, his policy would have lapsed, and his heirs would have received nothing; that is, he claims that he earned this excess sum *ex industria.* Secondly, his claim is based on the permission of the company, who told him to keep the twelve hundred dollars. Thirdly, he considers the sum his, for the reason that the heirs received even more than they had expected, and were satisfied with that amount.

Now as to the first argument, we hold that it has no force. It is true that had the agent not persuaded the insured to keep up his policy it would have lapsed; but it is likewise true that in so doing, said agent was acting for the interests of the company, and in no sense as the agent of the insured, even though the insured profited by the industry of the company's employee. Since, then, the agent was acting as the employee of the company, he must look to the company for compensation for any extra labor involved in the protection of their interests. Nor does the fact that the

insured profited by the industry of the agent change in the least this conclusion. For it is equally true that the insured profited by the industry of the agent when he first took out the insurance policy, though the agent did not, at that time, expect any compensation from the party insured. When the deceased renewed his policy, he entered into a contract with the company, which agreed to turn over to his heirs all moneys covered by that contract. Now, the money in question was covered by that contract and must therefore be turned over to the heirs of the insured, as it is their lawful property. Had the agent not prevailed upon the insured the heirs would not be entitled to one cent. Why? Because then there would have been no contract. But a non-existing contract can never change the status of an existing contract.

The second argument is absolutely valueless. The company ceases to be the owner of the money at the death of the insured. Hence, it cannot give to the agent that over which it has no power, and hence cannot in justice deprive the heirs of the money belonging to them.

The third reason assigned is, that the heirs were satisfied with the amount received, for they did not expect to receive so much. But this reason is fallacious in assuming that they would have been satisfied had they known the exact condition of affairs. Had they known that they were entitled to $2,000 they never would have been satisfied with $800. Their ignorance does not alienate their acquired right; nor does it vest that right in the person of the agent. There is only one thing to be done, the agent must restore the ill-gotten money to its lawful owner, viz., to the heirs of the deceased policyholder.

XVII. RESTITUTION ON ACCOUNT OF COOPERATION IN INJUSTICE

Case.—During twenty years of service in a very large firm, Brown appropriated altogether about $10,000, taken at various times and in amounts varying from $1 to $100. Generally he was alone in his dishonesty, but sometimes, especially in the case of larger amounts, he had accomplices among his fellow workmen, with whom he shared the money stolen on the occasion. Moreover, during the past five years he had been a superintendent for the company at a good salary, and he had given employment in his department to a number of men on the express condition that they should pay him a percentage of their wages, foreseeing that most of them would get this money out of the company. And often, to increase his own as well as their earnings, he had instructed and encouraged them to report more time and labor than had actually been given to certain special work. All the money thus obtained by him from the men amounted to about $6,000. How much of this sum the men had unjustly taken from the company in order to pay him, and how much had come from false returns of work, he had no idea, having given no special thought to the matter.

Fifteen years ago the company failed and dissolved, all its holdings being sold to pay its creditors. The assets were not sufficient to pay all the creditors in full. Brown went to a distant growing city and invested his savings in real estate. He was very successful, and is now worth over $100,000. During all these years he neglected the Sacraments. Recently he attended a mission and now desires to make all things right.

Out of the many questions which this case suggests, let us consider the following, which will suffice for its ordinary solution.

1. Were all Brown's thefts sins?

2. Is the above statement of the case sufficient for the integrity of the confessions? Or must Brown tell approximately the number of times he took an amount constitutive of mortal sin?

3. Does it make any difference whether he was alone or had accomplices in his thefts? Is it necessary to mention this circumstance in confession?

4. As superintendent did he commit any *special* sin in instructing and influencing those under him to make exaggerated and unjust reports of work done?

5. What about the hiring of men upon the condition named? Because graft is a common practice of industrial life, is it therefore justifiable in conscience? Is it allowable to increase charges for work in order to meet the demands for graft?

6. Is the statement given for this feature sufficient for confession? Or must Brown tell the number of men he led into these dishonest ways, the number of parties injured and the amount in each case?

7. What restitution is he bound to make? Has he any obligations of this kind on account of his accomplices or on account of those whom he wrongly advised and encouraged?

8. Must he pay any interest?

9. To whom shall he make restitution?

1. It would seem that in such a case as Brown's, who steals whenever the chance offers and whose only care is that he be not caught, each theft is to be considered as a distinct moral act. Therefore, his every theft of a separate sum deemed in this country *materia absolute gravis* certainly constitutes a distinct mortal sin, unless we suppose that he started out with the intention of stealing $10,000, or

that seeing a chance to get away with a very large sum, say $1,000, he saw fit to take it in installments of from $50 to $100. His stealings of lesser amounts were only venial sins. If, however, in the course of any one week, or month, or perhaps two months, while appropriating these lesser amounts, he adverted to the fact that together they amounted to a very considerable sum (a half larger than the *materia gravis* in a single theft), he was in this also guilty of mortal sin. (See Cath. Encyl. on theft; Tanquerey, 441, 444, edit. 1910.)

2. In itself it is not sufficient. For just as a penitent who has been away from confession for years is obliged to tell the number of times he missed Mass or got drunk or sinned *contra sextum,* so must Brown tell the number of his mortal sins against justice, as nearly as he can. On those occasions when he took $100 at a seizure, he committed only one mortal sin. At other times he no doubt committed several mortal sins, while getting a like sum. If, however, in the long interval of years, he has forgotten these details, the statement of his case as given would suffice in the confessional.

3. Merely that there are accomplices does not change the nature of the sin of injustice and is not a circumstance which must be mentioned in the confession of the sin, except where a number conspire to steal an amount *materialiter gravis,* though the amount taken by each is only *levis.* Of course there is more or less scandal.

4. But that Brown advised and encouraged men under him to be dishonest toward their common employer is a sin against charity as well as against justice. To lead men into the habit of theft, as Brown did, is a grave sin against charity, even though we might make the very unlikely supposition that none of these men while under him ever sinned gravely in the matter. He sinned against justice and indeed gravely many times by reason of the serious

losses incurred by the firm and others through this multiplied dishonesty and thievery.

5. As to giving men employment on the condition that they give the superintendent or foreman hiring them a portion of their earnings, while there is no justification for such action, and no adequate title to such moneys, since he gets a salary for this very work, unless it could be supposed the firm knew and approved thereof, nevertheless it is difficult to assert there is sin in it. But if such a condition and levy is a proximate cause of leading the men to defraud the firm, in order to make up the amount of levy, or if in hiring the men the superintendent or foreman looks rather to his own profits than to the efficiency of the workmen, and the welfare of the firm, then he is sinning against justice, and mortally if the injury is grave. The same principles can be applied to all forms of graft. Graft is unlawful as often and in so far as it causes injustice. It is not lawful to make anyone pay for work not done, or to add to bills or to falsify returns in order to meet the demands of graft, unless the willingness of the master or employer to meet these gratuitous charges can be most reasonably presumed (see Sabetti No. 544 and No. 535, (60); Tanquerey No. 768). As to Brown's case, there can be no doubt that he committed grave sins in this respect, for he was knowingly and intentionally more or less the cause of direct injustice to his employers and to their patrons.

6. Again we must say that in itself it is not sufficient for the integrity of the confession. Brown was the cause of the sins of his men as *mandans* or at least *consulens*. Therefore he was the cause of grave scandal in the case of each man. Also he was the cause of grave sins against justice which each man committed. Therefore, in confession he is obliged to tell as nearly as he can the number of men so influenced, and the number of times they sinned.

His remembrance of the facts may be extremely vague, but he can certainly be more explicit than is the statement of the case in its exposition. As to telling the number of the parties robbed, *valde controvertitur.*

7. Plainly restitution must be made of the $10,000. Also, since he is more or less certain that all of the $6,000 or most of it was stolen by the men that they might have wherewith to pay his graft, he is bound to make restitution of all or, according as a conscientious judgment will determine, of most of it. Moreover, since this sum represents only a portion of the damage he caused to be inflicted upon others by the workmen, as *mandans* or *consulens* or *co-operator,* he is obliged to do what he can to repair all the damage thus inflicted; and if they have not made and will not make restitution of their share, he is bound to make good for them in so much and in so far as he was the efficient cause of all the thefts. It is stated he has no idea of the amount of certain losses for which he is responsible. There is, however, a minimum amount of which he can positively assert, "it is that much at least," and to the full extent of this minimum he is certainly obliged to make restitution.

8. As to interest: Although it is true that *res fructificat domino* still in the payment of restitution interest cannot be demanded unless it is certain that the injustice had unquestionably caused a loss of this kind. Of course, if there is no doubt at all of the *lucrum cessans* in a given case, interest must be paid to the full extent of the loss. (Tanquerey 508. *"Si dominus, utpote maxima solertia praeditus, viginti per centum ex negotiatione lucrari solet, et per furtum impeditus est quominus id lucraretur, fur tenetur id solvere; secus non compensat damna injuste illata."*) Ordinarily, however, such is not the case. For there is no telling what might have happened to the principal had it remained with its rightful

owner. True, he might have invested it advantageously or put it in a savings bank. But this is not certain, and so in *praxi* interest cannot always be demanded in restitution. (Tanquerey 510: *"In praxi, vero, saepe difficile est determinare utrum et quandonam conditiones supradictae verificentur; si res dubia maneat, urgenda est solummodo compensatio valoris quem tempore furti res habebat."*) As a matter of fact, the affairs of the firm from which Brown stole were so badly managed that the company failed utterly. Indeed, the $10,000 which he is now restoring might have been lost altogether had he not taken it. Accordingly he is certainly not bound to pay interest on it.

It would be different if Brown had stolen a horse and wagon from a poor expressman whose livelihood depended upon them, and who could not replace them, and upon whom as a result debts piled up as never before, and he and his family lived in hardship never experienced before. In such a case not only must restitution of horse and wagon be made, but also restitution on account of *damnum emergens.*

9. As the firm from which Brown stole the $10,000 no longer exists in any way, and the administrator or receiver has no doubt long ago closed up its accounts, he must make some reasonable effort to find the heirs, creditors and stockholders, and according to his best judgment divide the money between them pro rata—in proportion to each one's just title to it. If he cannot find all the heirs, creditors and stockholders, he must hand over the shares of the missing ones to charity. The same rule must guide him in making restitution for damage done by him as *mandans, consulens* or efficient *co-operator.*

XVIII. PAYMENT OF A DEBT OWED TO ONE DECEASED

Case.—The editor of a newspaper applies the fee still due to a deceased contributor, a member of a religious Order, to Masses for the repose of his soul.

Question.—Did the editor act rightly?

Solution.—This question must be answered in the negative. The fee due belonged to the contributor; it was his by legal right, and this right, like all other rights, was by his death transferred to his heirs, and to these, therefore, or to the estate this fee should have been paid. With death the right of a person to all his temporary possession ceases. It is, therefore, not allowed to apply part of the possessions of the deceased according to the *supposed* intentions of the deceased. Since all rights to his properties have gone to the heirs, these have the right to claim the property, and as long as this claim has not been satisfied the demands of justice are not fulfilled. To have Masses said for the deceased does not satisfy the claim of the heirs, therefore it is not capable of cancelling the indebtedness, which can only be satisfied by payment. Only a reasonable assumption of consent on the part of the heirs can make such a discharge of a debt legitimate. In the case of a member of a religious Order, the Order or religious community is the heir. In the same way as on the death of a member of a religious Order everything that he possessed or received from the Order for his use, or legitimately earned, reverts of itself to the Order, all legal claims of the deceased do so likewise, so that anything due to the deceased must be paid to the Order or community. In this case the application of money for Masses for the deceased is not a

proper or sufficient payment. Of course, a religious Order would probably not object to such application of the money due, but if such objection would be made the fee would have to be paid in money. This member of a religious Order was entitled to payment for his work, and upon his death his legal claim becomes the legal claim of his heirs.

In a religious community of simple vows the community is not the heir of the professed religious, unless made so by the last will of the religious. Such a community, nevertheless, could claim the fee in the present case because the community became the owner of this fee while the religious was alive.

XIX. A DRUGGIST'S LIABILITY

Case.—Felix, a prominent druggist in a suburban town, compounded a prescription for a business man of the town. Through carelessness he used a powerful drug not called for by the doctor's written orders, and as a consequence his customer was taken violently sick, and was unable to leave his bed for three weeks.

Question.—Is the druggist bound to compensate the business man for the loss sustained through his carelessness?

Solution.—The consequence of an error made through carelessness, must of necessity fall upon the shoulders of the one guilty of the carelessness. If this were not so, men could with impunity do considerable harm to their fellow-beings. So in the present case the druggist must feel that he owes to the business man a duty that fundamentally springs from the harm done by the mixing of drugs in a way marked by the lack, more or less, of a reasonable amount of care. There can be no doubt that the pharmacist should be mulcted for the benefit of the injured and sick business man.

Theologians are fairly unanimous in the contention that no compensation, *in justice,* is due for the injury done to the health of the customer, that is, for the pain, weakness, physical weariness, etc. Their decision is that bodily damage can not (probably) be compensated for, by the bestowal or exchange of goods of another order. The reason for this is that commutative justice demands equality. Where this is impossible of attainment, then strict justice ceases its call for satisfaction. The claim is made that no equality exists between the life of man and money. Hence strict justice does not demand a monetary return for harm done to ones health, or bodily life. Of course this ignores the question of equity.

The druggist, however, cannot be excused from repairing the injury done to the business interests of the sick man during the three weeks of sickness incidental to his mistake. Furthermore, the protracted illness has been a constant drain upon the money chest of the sick individual, and this, too, must be laid to the door of the careless pharmacist. Of course, extraordinary and unforeseen harm cannot be charged to the druggist. He is to be mulcted only in proportion to the degree of his guilt. Moreover, no charge can be made by the druggist for the medicine necessary to aid the recovery of the sick man. For it would be manifestly unjust to make a man ill by one drug and then compel him to pay for the drugs needed to remove this illness. Hence the drugs are to be supplied gratis.

The real difficulty to be overcome on this point is to do what justice calls for and still avoid injury to reputation. The amount of carelessness in the case surely does not demand the sacrifice of one's business reputation. Therefore the druggist must seek some method of conciliating the claims of justice to his customer with the preservation of his own good name. If this cannot be done, then the preservation of his reputation must take precedence over the lesser claims of pecuniary satisfaction for harm done.

XX. DETRACTION

Case.—William, a native of New England, moved to Canada in order to live down the stigma of illegitimate birth. Here he was successful in business and finally married a lady of good family, concealing from her the condition of his birth. A few years later, James, a friend of his, traveling through Canada and hearing of William's marriage, intending no harm, divulged the hidden facts to a distant relative of William's wife, who, of course, immediately reported the matter to her. Hereupon the expected happened. James, conscience-stricken, hurried to Confession, only to be told that he had fallen into mortal sin.

Question.—Was James guilty of mortal sin?

Solution.—This is a case of detraction, and a grave case. Every man, by the law of God, has a right to his reputation. His good name is worth more to him than his bank account and, therefore, no one may steal this valuable asset, any more than he may steal his neighbor's purse, without falling into serious sin. The reason for this is evident. Grave and often irremediable harm is done, and this unjustly, in depriving one of his good name. In the present case we have a forceful exemplification of this. William's wife's parents would never have given their daughter to him in marriage, had they been aware of the defect which stigmatized William when he came into this world. For it is a fact that spurious children are frequently looked down upon, and treated as outcasts, though the curse that comes upon them is none of their own doing.

Secondly, the knowledge of the existence of this blot often interferes with the good of the marriage, affecting at times the primary as well as the secondary end of the union. It is a widely accepted

theory that children of ill-gotten parents receive as an inheritance a disposition which early shows tendencies to various evils, especially to that of lust; and though this be by no means universal, it occurs frequently enough to create a feeling of aversion to a marriage of legitimate with illegitimate offspring. This feeling of moral infection, with its partiality towards moral degeneration of the family tree, naturally causes parents to throw every impediment in the way of marriage between their children and the spurious.

From this we can see what a shock the revelation of the defect in William's birthright brought to his wife and her relations. To realize that they had been deceived by him was cause plenty for grief; but add to this the feeling that their family escutcheon had been dishonored, and the purity of their blood tarnished, and we face a condition well calculated to destroy all harmony—all peace in that family. Here then is another and serious result of James's garrulousness.

He has succeeded then in lowering William in the eyes of his wife and her relatives, if not in the eyes of his own children; he has put enmity between husband and wife, which frequently leads to the divorce court; he belittles William in his own estimation, and thus, in robbing him of what was most precious, he certainly has committed a very serious mortal sin. The fact that he did not intend the harm does not acquit him; he must have foreseen the effect that would necessarily follow from his revelation; hence, he must accept the responsibility entailed by that revelation.

XXI. CALUMNIATING THE DEAD, WITH OBLIGATION OF RESTITUTION QUOAD FAMAM

Case.—Rusticus grievously calumniated the deceased Strigonius in a newspaper article, and this article found many believers; it can not be said that the calumny has been forgotten; with many at least this is not the case. Rusticus had had few scruples about his action, as the honor and good name of the dead had been to him a matter of indifference; on his death-bed, however, he was much disturbed about the matter and told his confessor about it. The latter insists that the defamatory article be retracted, and that this take place publicly, because the calumny was a public one, and has not yet passed into oblivion; he grants, however, that this retraction may be so made as not to put the retractor in a bad light, if this can be done. Rusticus opines that it cannot be done without hurting his honor; and since in cases where they clash, the love of self, *ceteris paribus,* has precedence over the love of the neighbor, it appears here that restitution is a moral impossibility. In order however to do everything morally possible, Rusticus begged forgiveness of the son and the heirs of Strigonius, asking them at the same time to release him from formal retraction. All this was agreed to by the son of Strigonius.

Question.—Is the confessor to declare that this procedure of Rusticus satisfies the law?

Solution:

1. Defamation and calumny of deceased persons are not seldom regarded as something indifferent, because for the dead honor and good name are said to have no longer any value. But this is a lax and absolutely false view, for to calumniate the dead is for many

reasons a serious wrong. The chief reason is the nature of calumny which is wicked and hence allowable under no circumstances, not even in the case of the deceased. The second reason is that every one desires to leave an honored memory after his death, and by death is not to be deprived of the rights to honor and good name. *"Mortui iure ad famam non spoliantur, licet e vivis excesserint,"* say the Moralists. Further reasons which here come into consideration are: It happens not infrequently that through such calumny the profession to which the departed belonged suffers injury and great scandal is given; the friends and relatives of the calumniated have a great sorrow put upon them, and under certain conditions may suffer injury in their temporal affairs. Such a calumny may be made the reason for cancelling a marriage engagement.

2. As concerns the departed himself, not only is his memory dishonored, but the zeal to remember him in prayer will be lessened, if not altogether abandoned. The edifying example he gave in life, the good teaching and exhortations that we heard from him, will lose their power and efficacy. To all this must be added that the departed is helpless against the malice of the calumniator, cannot protect or defend himself, cannot expose the calumniator, nor prove the untruth of the calumny. This is exactly the reason why evil-speaking about the dead has always been abhorred. Hence the old saying: *De mortuis nil nisi bonum.*

3. Calumny of the dead is, therefore, not only opposed to charity but also to justice, and consequently involves the duty of restitution. The honor of which we have robbed the dead—his honorable memory—must be restored, and if the calumny has been the *causa efficax damni* for a third party, for instance for the son or daughter of the departed, then also in this respect must the injury be made good. This is according to the unanimous teaching of the Moralists.

4. Let us consider in detail the obligation of restitution.

The teaching of all Moralists is that the calumniator of a dead person is obliged to retract, and that he must do so publicly if the calumny was public. Further, the Moralists go on to say, he is only released from this obligation when, and as long as, its fulfilment is a real moral impossibility, or if his calumny was not believed, or if in the meantime the same was shown to be false and was made known as such, or, finally, if the calumny has been forgotten, especially if the one defamed was little known, held no prominent position, etc. (S. Alph., *nn.* 997-999). The claim that the retraction of the calumny will injure the honor of the calumniator does not make the retraction a moral impossibility. If we would admit this, no calumniator would ever have to make restitution. It is true that in the case of a clash, other things being equal, precedence is given in the *ordo caritatis* to the love of self over love of the neighbor; but in considering this rule we must not forget the other rule: *in pari conditione potior est conditio innocentis.* Therefore the honor of slandered innocence, under equal or nearly equal conditions, has precedence over the honor of the defamer, whose malice caused his neighbor to suffer injury to his honor. If the defamer finds it difficult to act according to this rule he should remember that he himself created the situation. Only if it is a case of quite unequal circumstances, and if the injury to the honor of the defamer would be a much greater evil, might a moral impossibility be assumed. But this is an exceptional happening, and not to be presumed unless positively proved from the special conditions.

5. Can a calumniator of a dead person be released by the heirs from the obligation to retract?

The defamed person may release the defamer from retraction, and then the defamer is released from this obligation mentioned

unless this release contained in itself a disadvantage to the defamed which the defamer was obliged to prevent *ex iustitia.* This cannot be applied to a case of calumniating a dead person, for in that case such a release cannot be ascertained. The son and the heirs of a dead person can, of course, remit restitution in regard to an injury which was caused them through calumniating their dead father, but not in regard to the honor of which the father after his death was unjustly deprived, for the son is not master of the honor of his departed father. *"Obligatio restitutionis faciendae urget etiam, si quis mortuis iniuste detraxerit, neque haeredes eam condonare possunt, cum famae alienae non sint domini."*

6. The fact that in our times the restitution here in question is not much thought of, must not induce the confessor to take a course which would apply the Saviour's words: "If the blind lead the blind, they both fall into the ditch." In order, on the other hand, to burden no one with something he is not obliged to do, he will conscientiously, and without regard to person, investigate thoroughly whether or not there is good reason present here for releasing from restitution, namely from retraction.

XXII. MORAL IMPOSSIBILITY OF RESTITUTION

Case.—The Curate of X. was called hurriedly to a dying man, whom we may call Paul. In his confession Paul said that one thing especially gave him great worry, namely, the fact that he had misappropriated property. Many years ago, while he was book-keeper for a merchant, and pressed for money, he had taken two hundred dollars, and the theft had never been noticed. Now, however, he intended to set this matter right in order that he might die in peace, but not knowing how to go about it, he asked the curate if he would not settle the matter for him. In order to put the dying man at ease the curate said he was willing to help, and Paul should give him the money so that he might be able to restore it. Paul now explained that he was possessed of only half the sum defrauded, and for the other half the curate should turn to his heirs, namely his wife and two grown children. He would leave this matter to the prudence of the confessor, but begged that his good name might be spared. He had always had the reputation of a man of honor, and his wife and children must never find out that the departed husband and father had been a thief. The curate, seeing that the man was in his last moments, promised to attend to this point, and administered the sacraments. There now remained the question of the restitution, and this gave the curate no little trouble and anxious thought. On the one hand, he was to help the merchant regain his money, on the other hand, how could he recover it from the heirs without hurting the good reputation of the deceased.

Question.—What is to be done in this difficulty?

Solution:

1. That the curate is entitled by the instructions of Paul to

apply to the heirs, there can be no possible doubt, for *"haeres cum bonis etiam omnia debita et onera realia defuncti in se suscipit"* (Lehmkuhl, *Theol. Mor.* I. *n.*, 1157, IV). But how could this demand be made of them without jeopardizing the honor of the deceased? In our case this could be effected only under the title of a *legatum pium,* which Paul could be said to have intrusted to his confessor, the curate, the latter to make use of it according to his own judgment. This would not be an untruth on the part of the curate as, according to the Moralists, that which a testator wills for the repose of his soul, or to set right a wrong that evidently entails a *restitutio facienda,* may be regarded as a *legatum pium,* in so far at least as it is as binding upon the conscience of the heirs as a really pious bequest.

2. Another question, now to be taken into consideration is, whether it is prudent to make a demand under this title upon the heirs, and from this follows the further question, whether restitution in our case is morally possible. Let us here leave out of consideration the fact that a demand of this kind, even under the guise of a pious bequest, may arouse the suspicion of the heirs that there was some wrong-doing on the part of Paul that is to be righted. Let us not speak even of the embarrassment in which the curate will be placed should he be questioned by the heirs as to the application of the *legatum pium.* Let us ask, would it not be an awkward thing for the curate to make such a demand from the heirs, especially if perhaps some *legatum pium* is already mentioned in the will? And will he be believed if he states that Paul made this legacy entirely of his own free will, and without any inducement on the curate's part? The mere suspicion of legacy-hunting is harmful, and calculated to bring it about that the spiritual activity of the priest at the bed-side of the sick and dying will be regarded with

suspicion and mistrust. This is all the more likely as in cases of this kind even good Catholics are wont to become suspicious, especially if they consider themselves injured in their inheritance. The admonitions given in Pastoral Theology to priests and confessors not to interfere in matters pertaining to wills and legacies, but to restrict themselves conscientiously to their care for the soul, are full of wisdom. In our case such interference did not exist, either directly or indirectly, yet for reasons of pastoral prudence we would strongly advise the curate not to present such a request to the heirs, even though the merchant may receive back only half of the money due him.

3. It is evident that the curate is not bound to make good the other half of the sum *ex propriis*. He has fulfilled his duty towards the merchant. As confessor he has undertaken the restitution in Paul's stead, but it is no fault of his that he can do so only in part. Or can it be that as Paul's representative he is bound to do more than Paul himself could do? According to a universally accepted principle Paul is excused entirely, or at least partially from restitution if a *moralis impotentia* exists. The curate is similarly placed, because the restitution of the second half of the sum is for him beset with such difficulties that these constitute a true *impotentia moralis,* which relieves him from any further obligation in the case.

4. It cannot be said that the curate was responsible for this inability by imprudently undertaking the execution of the restitution. Under the circumstances, he could not have acted differently, as there was not a moment to be lost if Paul was to receive the last sacraments, which was far more important than the whole matter of restitution. But, even though there had been sufficient time, if the curate by not exercising sufficient prudence and foresight ar-

ranged the matter of restitution prejudicially to the merchant, even then he would not be obliged to make restitution, as in this case he would have been wanting in charity but not in justice. As confessor he was not concerned in the first place and *ex officio* with the *bonum vel damnum temporale tertii,* but with the *bonum vel damnum spirituale* of the penitent.

XXIII. A PROMISE

Case.—Peter, an aged man, without wife or children, promises to his faithful servant a legacy of fifteen hundred dollars to induce her to remain in his service. This legacy he actually puts in his will. Eventually he falls grievously ill and feels the approach of death. Now he becomes uneasy in his mind and fears that his relatives, the legal heirs, will be indignant over the legacy to his servant, and he decides to lessen the amount. He mentioned the matter to his servant and she is urgently asked to content herself with half the amount, and, furthermore, she is requested to inform his heirs of this change at the reading of the will. The servant does not take kindly to this proposition, but gives her consent in order to ease her dying master's mind. After his death, however, she lets the heirs pay her the full legacy, which they cheerfully do, considering it proper that so faithful a servant should be provided for in her old age. Now, however, the servant feels troubled in conscience, because she has not kept her promise; and she asks her confessor whether she may keep the whole legacy.

Solution.—Above all it is necessary to ascertain whether the promise is binding under the circumstances mentioned. The servant's dislike of the proposition was overcome only by sympathy for the dying man, and hence her consent might be considered not entirely voluntary. On the other hand, the fact that she gave her consent with a *"heavy heart,"* as she says, proves that she was fully aware of what she was doing: and that suffices to render the consent a voluntary one. The fact that a strong emotion influences an act does not take away from it the free will, if the person's judgment is suffi-

ciently clear to realize the nature of the act. Otherwise most mortal sins might not be mortal sins; for indeed most of them are committed in the heat of passion and yet free will is essential in mortal sin. Hence Lugo says (*De iust. et iure, disp.* 23, *n.* 18): *"Sententia communis et vera docet, ad obligationem ex promissione requiri et sufficere advertentiam plenam, quae ad peccatum mortale sufficeret, etiamsi calore iracundiae vel alia passione fiat."*

Of greater importance here is another fact that would appear as opposed to the voluntary character of the promise. There was present an error, namely, the supposition that the heirs would be displeased with the legacy. This error, it is true, was an error of the dying man, and the direct cause of his request, but the same error, no doubt, influenced the servant's promise; otherwise she would surely have given her consent conditionally, namely, that she would agree to a smaller amount if the heirs would really show displeasure. We have here, therefore, an *error causam dans contractui,* and such an one makes every *contractus gratuitus* a failure, at least in *foro conscientiae* (Compare Lehmkuhl, *Theol. Mor.,* 1 *n.* 1063). Therefore, the servant's promise is not binding.

If the old man's supposition had not proved an error, if the heirs had really shown displeasure at the legacy, the promise would have been binding. The question then would be, does it involve an obligation of *strict justice,* with obligation to make restitution, or merely an obligation of *fidelity* (*obligatio fidelitatis*) involving no obligation of restitution? Either may be the case in a promise. "I promise to give you this and that" may mean I pledge my word, my fidelity, that I will give you this thing; but it may also mean I invest you with the right to demand this thing from me at the proper time. The latter meaning is not the usual nature of a promise as such, hence such meaning must be expressed in some positive way in order

to be valid. We speak, indeed, in the case of a promise about the "right" to the thing promised. However, this is a right only in an abstract sense, and is really nothing more than the right to say to the one who made the promise: "Either you keep your word, or I must henceforth regard you as an unreliable person." The servant had given her word that at the reading of the will she would renounce part of her legacy. Accordingly there was only an obligation of fidelity, in the event that the heirs would be displeased with her legacy. The obligation of restitution would not be present in her case.

XXIV. PROMISE OF MAKING A DONATION

Case.—Longinus, a wealthy citizen of Delaware and a bachelor, gave to Helena, his sister, who was a widow, a valuable piece of property, accepting her promise to give five hundred dollars a year to St. Eusebius' Orphan Asylum. Within a month Longinus died suddenly. The transfer was then contested by Veronica, another widowed sister, on some legal technicality, and the courts decided against Helena. The property was then divided equally between Helena and Veronica. Now Helena wants to know whether she is bound to pay the five hundred dollars or not, or does she fulfil her end of the bargain by paying only one-half of that amount.

Question.—How far is she obliged in conscience?

Solution.—First of all, is she obliged to pay the five hundred dollars?

No, she is not. The agreement between herself and her brother, while presumably a valid one when made, was in point of fact an invalid one, for the courts discovered a secret defect which robbed it of its legality. It is evident, then, that Longinus did not keep his part of the contract, which called for an actual and valid conveyance of the property to his sister; and though we cannot accuse him of lack of good faith, yet his error, a costly one to Helena, since it deprived her of one-half the property, affected the substance of the contract, and thereby relieved Helena of the obligation she assumed when she consented to her brother's proposal. As, then, she did not receive what her brother promised and intended to give her, she is not bound to carry out his wish as to the five hundred dollars.

(2) Since she received one-half of the very property in ques-

tion, is she obliged to pay one-half the stipulated sum? No, she is not bound to pay even two hundred and fifty dollars. As no part of the agreement was actualized, in no way can she be compelled to pay any part of the money to the Orphan Asylum. While it is true she did come into possession of a large part of the property involved, yet she became possessed of it as an heir at law and under the terms of the general law whereby the next of kin are pro rata heirs to the estate of one who dies intestate. Not coming into possession of this special donation invalidly made by her brother, she cannot be said to be bound for one half the amount.

(3) Is Veronica held to pay the five hundred or the two hundred and fifty dollars? No, we can allege no valid reason why she is under obligation to pay a single cent of the money, for she was not the cause of the failure of the agreement between her brother and sister.

She has in this matter violated no claim of justice, hence she is not bound to make up for any loss suffered by the Orphan Asylum, by reason of the decision of the civil court. If the sisters agree to give the sum of five hundred dollars or any part of it to the Orphan Asylum, they do so from motives of charity, or out of respect for the wishes of their dead brother. Neither can this wish on the part of Longinus be held to be a pious bequest or donation. The very essence of such a donation requires that it be given directly and absolutely to pious causes or be committed to some one else, with the express mandate that it be handed over to the pious cause specified.

No such donation is expressed or implied in the given case, and though the Orphan Asylum does as a matter of fact lose the yearly gratuity, this happens through no fault of those who inherit the

estate of the decedent. It must be said, therefore, that both of the sisters can act as they please in this matter with a clear conscience. They might be *advised* to execute the wish of their defunct relative, but this is another matter. They cannot be compelled to do so.

XXV. A BUYER CONCEALING FROM THE SELLER THE REAL VALUE OF PROPERTY

Case.—A wealthy man saw a good chance to make a profitable deal. A coal mine, worked in his vicinity at great profit, acquires from the neighboring farms additional land, and gets it at a low price because the country people are ignorant of its real value. Our wealthy man figured: "I will buy the farm lands, offering for them somewhat more than the mine does, and then sell the same to the mine owners at a big profit: for when they see that they are dealing with a man who knows, they will surely pay more than they do now."

Question.—Can this be done with a good conscience?

Solution.—No, by this action the man sins against charity. It would be a duty of charity to explain to the owners the value of their land and the error they are making, instead of turning their ignorance to one's own advantage. That the man pays them more for their acres than the mine does, renders the unfairness somewhat less, but does not remove it. The appearance of a generous action is merely a pretense, and cannot deceive one as to the selfish motive of the whole proceeding. Here as always the words of Christ apply: *"Omnia quaecumque vultis ut faciant vobis homines, et facite illis"* (Matth. 7, 12). A man of genuine charity, a true friend of the people, would employ his better knowledge to the benefit of his neighbors and would either divide the profit with them, or, since they are more in need than he, give them the whole profit and thus protect the poor from great disadvantage.

It may be asked whether these transactions, dictated by egoism,

are unjust and unlawful, whether therefore the wealthy man in question is under the obligation of making restitution? To this is to be answered: No; for here it is not question of an error as to the substance of the object purchased, but as to its accidental qualities, which happen to render it more valuable to the mining company and to this wealthy man, than to other purchasers. The country people's error is, therefore, not an essential but an accidental one, and this renders the purchase of itself not invalid. But the chief point is this: the error was not brought about through cheating or deceit: the wealthy man did nothing to give to the owners an erroneous view as to the value of their fields; he therefore is not the effectual cause of their error and of the detriment suffered by them through him. Of course, the wealthy man let it take place, and did not prevent the harm which was caused the farm owners. But a *non obstans* is obliged to restitution only when it was his duty *ex officio, contractu vel quasi contractu,* to prevent the injury, and in such relation the wealthy man does not stand to the farmers, as he is not appointed their protector, nor master or superior, nor even adviser. He is obliged to avert harm to them only as a matter of charity towards his fellowman; but a violation of charity that is not accompanied by a violation of justice does not impose the obligation of restitution. Therefore the action in question was not unjust, but unfair and uncharitable.

XXVI. A WITNESS WITHHOLDING FACTS

Case.—Titus is charged with arson. As a matter of fact he has destroyed by fire the house of Louis, who had refused to be blackmailed and was in consequence made to suffer the loss of his property. Mary, to whom Titus is engaged to be married, has certain knowledge of the crime. Titus told it to her in a spirit of boasting. On the witness stand, and under oath, Mary is questioned as to her knowledge, and she stoutly claims ignorance of the event under investigation. This she does because of a well grounded fear that Titus would take revenge for betrayal by an act of physical violence. Moreover, should he be sent to prison, her marriage would be abandoned.

Question.—Is she justified in her denial?

Solution.—In a public court the common good demands that every witness shall speak the truth. The obligation of obedience to legitimate authority calls for such an avowal. More than this, the oath which those in the witness box must take, invests all testimony thus given with a religious value, and hence any infraction of the truth would be a sin against the virtue of religion. Finally, commutative justice renders the truth imperative, and as a result a lying witness would be obliged to restitution, should he inflict any loss by reason of his mendacious testimony. But all theologians hold that a witness, even when bound by oath in open court, may be excused from telling the truth outright under certain well defined conditions. Also the civil law, for instance, allows a witness to hide the truth when direct avowal would tend to incriminate himself. In some cases it even refuses to accept a confession of guilt, though

affirmed by oath. Again, the law allows particular, confidential communications, those for instance between physician and patient, between priest and penitent, to be withheld from knowledge, on the ground of public expediency. So in Canon Law a witness may be excused from telling all he knows, if what he knows comes to him as a *secretum commissum,* or if, from testimony demanded from him under oath, he has reason to fear more than ordinary harm to his reputation, to his goods, or violent, physical harm to his person.

The amount of such harm must be weighed against the harm coming to the community, or to a third party, by reason of the refusal to divulge what one knows to be true. In the case before us we do not deem that Titus could do such grave harm, because his conviction would mean a very long residence in jail, and hence the probability of vengeance would be slight.

Should he escape conviction, or receive only a short sentence, then, undoubtedly, Mary would have grave reason to fear for her personal safety. In this circumstance she would be justified in refusing to divulge her knowledge, for to do so would be to risk her own life.

Her concealing the facts does no positive harm to a third party, or to the state, while it does protect her from any serious bodily and mental evil. On the other hand, mere friendship, however close, would by no means free her from the necessity of telling the truth, and the whole truth, at the judicial investigation. We are of the opinion that her marriage engagement would excuse her from giving the sought after testimony. We hold this for two reasons: First, because under such circumstances her knowledge was gained *sub secreto commissio,* and, secondly, to divulge what she knows would work a more serious harm to her than the refusal

to testify would work to the state or to the individual. Hence she is not guilty of perjury, at least canonically, and consequently she is not bound to restitution in any sense or to any one, for by her just refusal she has not violated commutative justice.

XXVII. MORNING AND EVENING PRAYERS

Case.—James, who confesses about once a month, repeatedly accuses himself of omitting his morning and evening prayers on at least twenty days of the month. This has gone on for about two years; for despite renewed promises, there has been no improvement. The confessor is in doubt as to whether James fulfills his obligation of prayer.

Question.—What should be the confessor's attitude?

Solution.—There is of course an obligation to pray and to persevere in prayer. Our Lord said we should always pray and never grow weary. But how should we interpret this command of Our Saviour? There can be no doubt that for adults prayer is an essential means to salvation. Without it we cannot save our souls. The reason for this is that God has determined not to give His efficacious graces to those who do not ask for them. It is clear that people who do not ask for grace, are not much concerned about their ultimate perseverance. They are indifferent alike to God's rights and their own eternal welfare. In this neglect is involved a breach of God's Law commanding men to pray. For there existed under the Old Law an obligation to address God in prayer even as such an obligation exists under the New Law. How often then should we pray in order to do justice to God's decree? While no definite determination can be given on this point, it is certain in the minds of theologians that we do our duty essentially by *frequent* prayer. Hence our Lord's words as given by St. Luke are to be interpreted in this sense. It is evident then that the omission of daily morning or evening prayer is not necessarily sinful. There are many ways of praying *frequently* other than by our night or morning prayers.

It remains true, nevertheless, that he who constantly neglects morning and evening prayer will eventually lose the habit and spirit of prayer, and so in time will not pray *frequently*. By this sinful negligence he will surely jeopardize his soul's salvation. We can safely say that while *per se* the omission may not be sinful, the motive behind the neglect may be. Hence confession of the omission is to be permitted. The confessor should urge the penitent to use more care in the matter of daily prayer, not on the ground of the proximate prevention of sin, but on the usual theological basis, pointing out the necessity of prayer, its usefulness and so on. He should strongly encourage his penitent to form the habit of frequent and brief ejaculatory prayers; as these consume no time and can be made anywhere and at any hour, he can hope for a good measure of success, while by this practice he is making it easier for the penitent to get back into the Christian habit of morning and evening prayer.

XXVIII. HUSBAND'S POWER OVER VOWS OF HIS WIFE

Case.—Ximina, when a maiden of seventeen, made a vow to the Blessed Virgin, which she faithfully fulfils, though it entails many hardships and consumes much of her free time. A year ago, at the age of twenty-three, she married Rimines and has ever since remained true to the practices demanded by the vow. Her husband has remonstrated with her many times, claiming that she is harming herself by the cultivation of the vow of piety. His reasoning having no effect, he finally placed the matter before his confessor, Father Leo, who told him that priests had not the jurisdiction to set aside vows, even of their penitents, but that he (Rimines) as a husband had such jurisdiction and could nullify the vow of Ximina. Rimines acted on the advice of his confessor, and now his wife, full of anxiety, consults her confessor as to her duty in the matter.

Question.—What must Ximina do?

Solution.—Father Leo, the husband's confessor, spoke correctly when he affirmed that no priest, neither pastors nor confessors, had the power of annulling vows of any description. The ordinary jurisdiction for such action is vested in the Pope, in Bishops and in Prelates of religious Orders. The pastor and confessor must have delegated jurisdiction before he can validly annul vows that bind in conscience. Sometimes this delegated jurisdiction is conceded in the faculties given to every priest authorized to work in a given diocese. But generally this is not the case. Father Leo was also giving a true theological decision when he informed Rim-

ines that, as the husband of Ximina, he had the power vested in him of setting aside any vow made by his wife. A vow may be annulled directly or indirectly. Directly, it may be set aside by one who has power over the will of the person who has bound himself by the vow. Inferiors in their relations to superiors can take upon themselves duties imposed by a vow only conditionally, that is with the consent of the superior. If this consent is refused then no vow is binding. Under this ruling, religious, children and wives are not capable of taking a vow without the consent of superiors, of parents, or of husband. So that, following the logic of this decision, Ximina could be released from any vow taken after her marriage, by virtue of the power over her will vested in her husband by divine authority, if said vow had been taken without his consent. Then the vow would have been taken in prejudice to his lawful rights.

But the vow in question was taken prior to the woman's marriage, when Rimines had no authority over her will. This is true, but a vow may be nullified even indirectly, that is by one who has authority over the matter of the vow. Hence a husband who is by the divine plan the head of the wife, has dominion over her will in all things that pertain to the woman as wife, mother, mistress of the household, etc. This action on the part of the husband is valid when done, even without just cause. It is likewise licit when the head of the family feels that the fulfilment is irksome to him, or prejudicial to the best interests of family life. So that, in the given case, the husband Rimines may both, validly and licitly, use the jurisdiction that God has confided to his keeping, and annul the vow of Ximina even though it was taken before her marriage. She voluntarily submits herself to this power when she gives herself to him in the *bonds* of matrimony. On her part she, too, may nullify the vows of her husband indirectly, when they cause him

to neglect the duties he assumed by becoming a husband and when the vow thus interferes with the rights she assumed by becoming his wife. Ximina is bound to obey her husband, who now releases her from the binding force of her vow.

XXIX. CRYSTAL GAZING

Case.—Recently I discovered that two of my friends have for some time past been in the habit of attending séances at which crystal gazing was a regular feature. I was greatly shocked at the discovery because both are otherwise good Catholics, and are frequent recipients of the Sacraments. Upon broaching the matter I was more shocked when informed that they had been told that they could without sin keep up their visitation of the house of the séances. I insisted that their action could not from the standpoint of morals be defended. I bluntly stated that they were guilty of sin.

Question.—Am I right in my contention?

Solution.—Crystal gazing is to be reckoned as one of the forms of divination. It is a superstitious practice and as such is an infraction of the First Commandment. The malice of the sin is in this that the devil is called upon to give his aid in the acquisition of knowledge that is secret or hidden. That the devil does help betimes is beyond cavil. Perhaps no mention is made of the devil's name, but the very use of such inadequate means to come to a knowledge of what is occult, means which have no natural connection with the end in view, and which have not been sanctioned by God, is tantamount to a call upon the prince of evil. Such action is necessarily sinful and grievously so. God is insulted by such friendly intercourse with one who is His enemy, and who has no power except that which is permitted him by God. Our Creator is the keeper of the secrets of the past, present and future, whether of the human heart or of nature. The crystal gazer ignores the

God of all knowledge and seeks aid from him whose great desire and constant effort is to displace God in the hearts of men. He will help man to reach the forbidden, if man will help him to unthrone God. Hence there is entailed a form of devil-worship in this evil practice which makes it abominable in the sight of the all-wise and all-holy God. Scripture says "the Lord abhorreth all these things"; so that we must conclude that a penitent cannot be absolved who refuses to give up what is so sinful, and which experience proves is so full of danger to a Christian's faith. It is difficult to explain how any one with a knowledge of his religion could tell these divinizers that they could continue their evil-doings without falling into sin. Of course if they are not serious believers in the fruitfulness of this uncanny means of attaining knowledge, or attend merely out of idle curiosity or as a pastime or a joke, they are to be excused from mortal sin, but not from venial sin. However, even in this event we must take into account the danger of scandal, which is great if their habit is known, and, what is of more importance, the risk they run of suffering shipwreck in their faith, for, as the wise Augustine once said, the devil is pleased to tempt men to seek the occult so that "they may become more curious and get themselves more tangled in the manifold snares of pernicious error." You are certainly right in your contention.

XXX. THE MANIFESTATION OF A SECRET

Case.—Charles, a tutor in a college, and much trusted by most of the young men of the institution, receives a visit from one of the students, James, who requests a promise of secrecy in a matter he is about to confide to the tutor. Charles without hesitation gives the promise, and then learns that William, a member of the senior class, is corrupting the morals of the boys in the lower classes, by secret and depraved practices. Now it so happens that William is looked upon by the faculty as a boy of irreproachable character, a model in every sense. After a few days' reflection, the tutor informs James that it is his duty to denounce the depraved student to the college authorities. This James stoutly refuses to do. He cannot bring himself to *squeal* and be looked upon as an informer. Then Charles takes the matter himself to the college faculty. An investigation follows and William is dismissed.

Question.—Did Charles do the proper thing or was he still bound by his promise of secrecy?

Solution.—A *secretum commissum* of which the above is an example, binds under pain of serious sin, by the very terms of the contract which beget an obligation in justice. Yet common sense and the teachings of theology tell us that *under certain circumstances* it must always and ever be lawful to reveal certain knowledge receive under promise of secrecy. We could even go further and admit that the possessor of such secret knowledge may be bound in conscience to make it known. In the present case, we consider, that the circumstances are such that they make the revelation not only lawful, but they compel its manifestation. In the

first place the danger to many innocent charges of the school, sent there for the uplifting purposes of a moral education, and entrusted by parents who would quickly remove them from such an atmosphere did they know the real condition of things, makes the revelation necessary. Secondly the fact that harm had been and was being done to many of the pupils, imperatively called for immediate action, and therefore charity demanded that some way be found to put a quick end to the presence of so baneful an agent. No other way was at hand save the denunciation of the guilty party to the governing board of the school. This involved the breaking of the promise of secrecy, which in the given instance was entirely lawful. A third consideration would be the good name of the school itself. Although hidden at the time, it is absolutely certain that the condition of affairs would eventually become public property. The shock and the scandal thus produced would cause much detriment to the school; might even put an end to its existence, as now-a-days no school could endure which had lost its reputation. It is clear then that the school should be protected against the malign influence that threatened its life, and this could only be done by following the course pursued by Charles. It is true that James was unwilling to have the knowledge he confided made use of. But he was unreasonably unwilling, and his attitude was justly ignored by the more practical and more experienced tutor. His fear of being held as an informer might be classed as mawkish sentimentality, too prevalent at times in the young and more deserving of censure than silence. Charles did the only possible thing under the circumstances, and his action is not only licit, but praiseworthy.

XXXI. AN ILLEGITIMATE CHILD'S QUESTION REGARDING HIS IDENTITY

Case.—Ximenes was born twenty-one years ago, outside of wedlock. His parents gave up all claim to him the day they left him, a helpless babe, with a foundling asylum in charge of Sisters. He was reared in a charitable institution, and is now a sober, steady worker at his trade, ably supporting himself. He is anxious to know who are his parents, and how he ever came to be under the care of the good Sisters. To give him the requested information would be to make known to him the facts of his illegitimate birth and the evil life of his parents.

Question.—Am I justified in refusing his request?

Solution.—In the abstract it would seem to us that the young man in search of his identity has a right to the information necessary to establish that identity. The natural relations existing between parents and child put forth a claim, as evidenced in the activity of Ximenes, which calls for satisfaction. We would not deny that he is following an instinct natural to the race, and that he could lay claim therefore to an instinctive right.

But the question on the whole must be considered from another viewpoint, and must be decided by the influence of other conditions. Granting that fundamentally he has a certain right to the knowledge he persists in obtaining, would it invariably follow that he should be put in possession of the facts concerning his origin? We do not think so. We can conceive of cases, we know of some, where success in gathering such knowledge was not only of no

benefit, but was eventually exceedingly harmful. A case in point was that of a young lady who had been adopted by an excellent Catholic, though childless widow. The child was brought up a strict Catholic and lived an exemplary life for twenty years. An accident led to the discovery of facts, and this so overwhelmed her with a sense of shame that she cursed her real mother, and despite the efforts of the widow, who had a real affection for her she grew lax, rejected the admonitions of her confessor, and ultimately abandoned herself to the allurements of the forbidden path.

This may be considered an isolated case, but such is not our view. At all events it has to be reckoned with. So, in the case before us one would have to reflect upon the harm that would probably come to the child of such parents, and would likewise have to consider the present condition and circumstances of the parents, not forgetting to reckon with the rights of society itself. In almost every case the child receives a severe shock, is broken in spirit by the appreciation of the "taint," and cannot shake off the feeling of being an outcast. Continuous brooding, then, leads to pernicious results.

Again, the parents may be dead, and charity would ask that they be allowed to rest in peace. Or, if not dead, they have wantonly abandoned their child, and it could hardly be expected that they could exercise the wise control, the uplifting influence, of a good parent on their offspring. Nor can the unhappy child be expected to love and reverence the parent who conceived and abandoned it in sin. It will more likely hate its progenitors and repay disgrace by disgrace. Of course some may act otherwise. But exceptions are rarities. Society does not gain by the knowledge supplied to illegitimates. Experience proves that in ignorance of their natal conditions, such children acquire better moral

control over themselves, and lead more useful and more contented lives.

Why, then, should they be told the concrete facts? We think that whatever right they may have it must yield to the greater good that is apt to follow ignorance of their illegitimacy.

XXXII. FASTING

Case.—Arcadius, a young priest, was assigned one ember day by his pastor, who was suddenly called from home, to give a sermon during the triduum services to be held that evening. The work was gladly accepted, Arcadius saying to himself it would stand as a quid pro quo, in place of the fast prescribed for that day. A few days later, on another fast day, he settled down to a strenuous day's work, laboring zealously in preparing his paper for the conference, writing his sermon for Sunday, etc., with the conviction that his efforts of the day were sufficient to excuse him from the obligation of fasting. Upon the pastor's return the young priest acquainted him with the aforesaid facts, and was promptly told that the reasons set forth were not sufficient to excuse from so serious a law.

Question.—Was the pastor right?

Solution.—The obligation of fasting is a grave one, so that weighty and serious reasons are required to free the children of the Church from the binding force of this law. Such reasons make the law morally or physically imposible of fulfillment. Are the reasons alleged by Arcadius of such a nature? We do not think so. In the first instance, the preparation and delivery of one sermon, even under the given conditions of haste, etc., are usually not attended by such mental or physical fatigue as not to be compatible with even a rigorous compliance with the demands of the Church in the matter of fasting. There is a strain, of course, but our contention is that it is only a moderate one, and does not cause wear and tear enough to be seriously considered a legitimate

excuse. Besides, we are not justified in substituting what we wish for any definite obligation that we are apt to find irksome. However, nothing is said in the statement of the case of the physical state of our young friend. If his health is not good, and this extra labor, even though moderate in itself, or when added to other labors of the day, would make it morally impossible for him to observe the strict fast, without injury to his weakened condition, or interference with his priestly duties, then, of course, his view of the case would be a perfectly proper one; his reason would be a valid one. But we fear there is nothing of this nature in the case, and must decide that Arcadius was wrong and his pastor was right.

In the second instance, the pastor was again in the right. The intense labor assumed on the fast day was not necessary for that day, was undertaken freely on that day in preference to other days, and for the sole motive of escaping the obligation of fasting on that day. This extraordinary labor brought no special benefit that could not be gained on any other day not a fast day. We know that the doing of corporeal or spiritual works of mercy, even undertaken freely on a fast day, are sufficient to relieve one of the obligation when found incompatible with it, because they bring a greater good than mere fasting. But no greater good accrues in this case. Arcadius would do well to mend his conscience.

XXXIII. VOCATION

Case.—Of tne many serious duties of the confessor, that of deciding vocations is an extremely grave and important one. A young friend of mine is desirous of entering a religious community. He has consulted his confessor who has endeavored to dissuade him from doing so, persuading him on the other hand to enter the Seminary and there study for the secular priesthood. He has used the usual arguments and gone so far as to urge the aspirant's parents to use all their influence to this end. My friend is very distressed and feels inclined to yield on this point.

Question.—Does he owe obedience to his confessor in this matter?

Solution.—Neither parents nor confessor have any authority to interfere with the known Will of God, once that Will has been duly manifested. If a confessor endeavors to deter a candidate from following the higher life, merely because of his own peculiar ideas on the subject, or for any other unworthy motive, he is gravely sinning. He is interfering with the work of the Holy Ghost and using unjustly his influence to put the young man in a false and dangerous position in life. By virtue of his office as director in the confessional, he is bound to give unprejudiced advice, and he sins against justice as well as against charity by interjecting himself and his opinions into so sacred a matter at so sacred a time. Parents are likewise sinning when they throw unnecessary obstacles in the way of a vocation, or for worldly reasons turn a child from the path marked out by almighty God through the inspiration of the Holy Ghost. In this case the child must obey God, not man, even though the man in question be father or mother. But it may

be that the confessor is moved by a very worthy motive and not by any unworthy design. Perhaps after due consideration and much prayer for guidance, he has arrived at the conclusion that the young man has no vocation for the religious life but for the secular clergy. In such a case he is fully justified in assuming the position he has taken in urging the young aspirant to give up all idea of a religious vocation. This is no trifling matter. It is as important to put the young man in the Seminary when he is not called to the religious life as it is to put him in the novitiate when he is not called to the ranks of the secular clergy or the world. Where then the motive is proper and the judgment unbiassed, the action of the confessor is indeed praiseworthy. Let the young aspirant be obedient and God will not permit him to go wrong.

XXXIV. FORCING A PERSON TO ENTER THE CONVENT

Case.—Mrs. M. was entrusted with the care of two nieces who had as an inheritance the sum of ten thousand dollars. She was very fond of the younger niece, who was attractive and much sought by suitors. She had no affection for the older, who was not attractive, though good and gentle, and unsought in marriage. Mrs. M. finally concluded that the best place for her elder niece Alice was a convent. This scheme did not meet with Alice's favor and thereafter the homely relative was subjected to petty annoyances, which in time became persecution and made her life unbearable in the home of her aunt. After a few years of patient suffering, no longer able to bear such ill-treatment, she decided to enter the convent, hoping to have there a happier life than she had so far enjoyed. In this she was disappointed. Hence in the course of a few years she returned to the world. Meanwhile her sister had married and received what remained of the money of Alice, which the married sister now refuses to return, leaving Alice penniless and without a home.

Question.—What should be done?

Solution.—The aunt in question has certainly proved herself an unjust steward. She has a very grave account to settle with the Just Judge. She undertook to be a mother to the orphans and failed miserably. She sinned gravely by her schemes to force her gentle, though homely, niece to enter the religious life against the inclinations and wishes of the girl. She no doubt consoled herself with the conclusion that she was doing great good to the luckless girl, unsought in the world, by compelling her to accept the re-

ligious life—forcing her to accept the "*better part.*" In reality she was doing her ward a positive injury in driving her to act against her will, to take up the burdens of a life for which she had no fitness. The lack of the qualities needed for the successful and peaceful life in the convent could have but one result. Alice found herself even more unhappy in her new life than in the old one. She could not but feel that she was not doing God's Will and was in consequence running the risk of endangering her soul's eternal welfare. Therefore she gave up the convent life. For this she is to be praised.

Secondly, the worldly-minded aunt, for this is what she was, sinned against justice by the constant harassing to which she subjected a young girl, who was unable to protect or defend herself in her circumstances. She made the life of her niece unbearable, and although the vexations were in themselves petty, yet by reason of the relations between the two and the utter friendlessness and dependence of the girl, they became relatively grave. A girl's life for the most part is spent at *home* and she has a strict claim to proper treatment. A violation of this right may be a grave injustice and in the present case does constitute a serious fracture of the virtue of justice, since it forced the girl in question to leave what should have been her home, and compelled her to seek refuge in a convent where she was absolutely out of place. The liberty of Alice was interfered with in the choice of a vocation. This, indeed, is a serious matter. The Church demands postive freedom for all on this important point and to secure it she has placed heavy penalties on all who break so weighty a law. If the convent in question were one where solemn vows were taken, then this faithless aunt would incur the sentence of excommunication as inflicted by the Council of Trent. Now as to the conduct of the sister of

Alice, we must say it is indefensible. She has no right to the money —never had any right to it; she sins in keeping it, and, of course, is bound to restitution. She sins again in not helping her sister who is penniless and homeless. She cannot be absolved until she does her duty by the maltreated and defrauded Alice.

XXXV. A GIFT UNLAWFULLY MADE BY A RELIGIOUS

Case.—Hildegard, a professed lay-sister of an Order whose lay-sisters take simple but perpetual vows, desired to make to one of the servants a small present as a token of appreciation. Since the Mother Superior would neither give, nor allow, anything for this purpose, Sister Hildegard, without the Superior's knowledge, asked a woman friend for five dollars, pretending that she wanted it for a pious object. The friend made her a present of this amount, for her free use, and Hildegard in turn gave it to the servant, without the knowledge, and against the will, of her Superior.

Question.—To what extent has Sister Hildegard transgressed the vow of poverty? The matter of giving scandal, of disobedience, etc., in an act of this kind, is not taken into consideration here, but merely the violation of the vow of poverty, and relatively of justice, in the case.

Solution.—1. Through the *Votum simplex paupertatis,* as distinct from the solemn vow of poverty, Hildegard neither lost the *dominium radicale suorum bonorum,* nor the ability to acquire for herself temporal goods (*bona temporalia pretio aestimabilia*), but she had renounced all independent use of such goods, and all free and voluntary disposition of temporal possessions as a grave obligation (*sub gravi*). Hence Müller (*Theol. Moral.,* 1, *II,* 216) holds: *"Votum igitur solemne quemlibet actum proprietatis non tantum illicitum sed et simul invalidum reddit, votum simplex illum tantum illicitum, non invalidum facit."* The same views are expressed by Marc, and other authorities who deal with the difference between solemn and simple

vows. The acceptance of the gift by Sister Hildegard, asked for and received without permission, even against the wish of the Superior, was, therefore, valid but illicit. Cardinal Gousset writes: "A Religious sins against the vow of poverty if, without permission, he receives money for his own use, or for use according to his intentions, even if employing it for pious ends" (*Moral Theol.*, 540).

2. Sister Hildegard renounces this property by presenting the money to the servant, acting again without either the expressed or presumed permission of her Superior, another action manifestly against the vow of poverty. But is this not also stealing money from the convent? The canonical principle: *Quidquid monachus acquirit, non sibi, sed monasterio acquirit,* would seem to decide that the gift acquired by Hildegard became the property of the convent, and that her unauthorized disposition thus deprived the convent. This view must be rejected, however, because in the case of Religious of simple vows the principle quoted does not cover all possible manners of acquiring property, as is the case with solemn vows, but extends merely to the special work which such Religious practice as members of the community, as is apparent from the form of the profession. In regards to purely personal gifts this principle does not therefore apply in the case of simple vows of poverty. (See Gury II, *n.* 162 [9], and others.) In our case the *justitia commutativa* was not violated; the servant, though she sinned, if acting *mala fide,* by cooperating in transgressing the vow, still acquired possession of the money lawfully, and for this reason is not obliged to restitution.

3. Another question is whether the amount of five dollars forms a *materia gravis contra votum,* and hence whether Hildegard sinned grievously?

Moralists generally agree that the same amount that constitutes

a grave sin against justice is to be considered *materia gravis* when a Religious violates the vow of poverty. In a case of theft, five dollars would not be a sum sufficient in every case to inflict a grave injury on the loser (*materia absolute gravis*). In the present instance, Sister Hildegard did not take the money from the Monastery, and consequently, even though the Monastery were very poor, there cannot be question of *materia relative gravis*. Furthermore, since she received the money for the benefit of another, her act of proprietorship was much less than it would have been had she taken the five dollars for her own personal use. Hence we consider that her sin against holy poverty was not mortal.

4. Finally, if Hildegard had merely begged her friend to give five dollars to the said servant, and the latter had presented the money herself, then there would have been no *actus proprietatis,* and, therefore, no violation of the vow of poverty, though the nun's presumption and disobedience would call for censure.

XXXVI. DISPENSATION FROM SOLEMN VOWS

Case.—Anthony had made his solemn profession as a lay brother of a religious Order, having taken simple vows three years before, upon completing his novitiate. At that time he gave evidence of being quite scrupulous, otherwise he was perfectly satisfactory. Soon however he began to suffer so severely from melancholy that he had to be placed in an insane asylum. After two years in that institution the officials declared him in condition to leave, but warned against his resuming the religious life. Anthony now petitioned the Ordinary to obtain for him a dispensation from the vows, asserting that he made his profession unwillingly, and that ever since he had been troubled with great scruples. He could not possibly stay in the Order. It was ascertained, moreover, that both his father and his sister had died as inmates of an insane asylum.

The Ordinary made application to the Holy See, submitting full details of the case, stating also that Anthony had correctly made his solemn vows, and had testified in writing that he was acting without compulsion, and fully conscious of what he was doing. Nevertheless, he may have been suffering even then from a hereditary taint of insanity; it was stated, also, that the physicians feared that he would again incur his melancholy if he returned to the Order.

Question.—May solemn vows be dispensed?

Solution.—Solemn vows may be dispensed, but the dispensation is reserved to the Holy See. Infirm health is considered a sufficient reason for granting the dispensation from simple vows. A graver reason is required to dispense from solemn than from simple vows.

But if the nature of an infirmity were very serious, it might constitute the very grave cause that is required for a dispensation from solemn vows. In the present case the *S. Congr. Inquisitionis,* by virtue of papal authority, granted to the Ordinary power to dispense the lay brother from his solemn vows, so that he could enter the married state, with a Catholic, lawfully and validly. The condition was imposed that in case his wife died before him a second marriage was prohibited; he was to be informed also that every violation of chastity, outside of marriage, would be a sin at the same time against the vow of chastity.

As special penance the Bishop was to impose upon him for life (1) to say the rosary of five decades at least once a week; (2) to approach the sacraments at least five times a year, at Christmas, Easter, Pentecost, the Assumption B. V. M., and All Saints; (3) to fast strictly on two days of his own selection, once in honor of the Immaculate Conception, and once in honor of St. Joseph.

XXXVII. THE FORM OF BAPTISM

Case.—Father Marcellus is perplexed about the validity of a Baptism he administered. Owing to the endings of the different names of the child, each of which ended in *a,* Marcellus *thinks* he said: "Baptiza" instead of Baptizo.

Question.—Must the Baptism be repeated?

Solution.—We note that Marcellus *thinks* he changed the form of Baptism. That surely does not invalidate the Baptism. Before there can be any question involving a repetition of this necessary Sacrament there must be a more reasonable foundation for the doubt than a mere *think so.* Theologians are agreed that a mere *negative doubt* is not sufficient to warrant an iteration of a Sacrament. It is not lawful to repeat a Sacrament even *conditionally* under the circumstances, for such a doubt is held to be *omnino imprudens atque inane* and hence the reconference of a Sacrament would make the minister guilty of a mortal sin. But suppose that *de facto* Marcellus did use the form quoted above, would that invalidate the Baptism? Here again we must answer in the negative. For a form is invalid only when there is a substantial change affecting it. Now a substantial change is had when the words have a sense different from that intended by Christ (cf. Noldin, vol. iii, par. 15), nor is it necessary that they should have *ex se* the signification intended by Christ, but it suffices that from the manner in which they are uttered *hic et nunc* they impress that sense on those who hear them (Noldin, *ibid.*).

As to the form used above it is evident that the supposed modification would not affect it substantially. It is quite clear, too, that the sense of the word as impressed upon those assisting at the

Baptism, was no other than the sense which Christ wished to be conveyed by the use of the Baptismal formula. It must be said, then that the Sacrament conferred as indicated by "Marcellus" was validly administered and cannot *even conditionally* be reiterated. Moreover, we have a decision from Rome declaring the validity of a Baptism given with the form: "Baptizo te in nomine Patri*a*, et Fili*a*, et Spiritu Sancta." Our only advice, then, would be to exercise greater care in future.

XXXVIII. WHAT TO DO IF A NON-CATHOLIC SPONSORSHIP SEEMS UNAVOIDABLE

Case.—The Protestant Titus, whose wife is Catholic, comes to the Catholic priest to ask if he will baptize his first-born; remarking, by the way, that the godfather will be a Protestant friend. Upon being told by the priest that the Catholic Church does not permit non-Catholic sponsors, Titus replies that unfortunately it cannot be helped in this case. The promise has already been given and he could not afford to offend the sponsor as the latter was fairly well to do, and could later on be of substantial assistance to his child. The priest knows well that if he insists on refusing the Protestant sponsor, the Protestant father will have the child baptized by his minister, and therefore he performs the Baptism with the non-Catholic sponsor in order to make sure of the child's Catholic baptism, and, no doubt, he acts correctly on his part.

Question.—What may the priest do, so that, despite this irregular sponsorship, he may not break the canonical rules?

Solution.—The way out of this difficulty is to let the Protestant sponsor act merely as a witness to the Baptism, as honorary sponsor, but not as real sponsor. In our case this is no doubt allowable, and is not in opposition to the decree of the Holy Office, of May 3rd, 1893, which decrees that Baptism should rather be administered without any sponsors if otherwise a non-Catholic godfather is unavoidable, meaning a sponsorship in the Catholic sense. Since, now, a merely honorary sponsorship is a purely external thing, without any of the obligations towards the child, it is certainly allowed, even if the person is non-Catholic, in a case of necessity. Of course

the Protestant sponsor, be it distinctly understood, must not perform any of the functions of a Catholic sponsor, such as making the act of faith or holding the infant during the ceremony; this should be done by some one else present, the nurse for instance, or the sexton. The Protestant may be told that as a Protestant he will not be expected to affirm the Catholic creed. The non-Catholic honorary sponsor is to be entered upon the books merely as witness, not as sponsor.

XXXIX. THE INTENTION REQUIRED IN ADULTS FOR THE RECEPTION OF BAPTISM

Case.—To the pastor of a city parish there came a young Jewess who asked for Baptism and admission to the Catholic Church. The young woman was known to the pastor as a teacher in a public school, and he was aware that she enjoyed an excellent reputation. The young woman said frankly that the chief reason for her step was the antagonism she met with on account of her being a Jewess, and by becoming a Christian she expected to be advanced more rapidly in position. The pastor was much displeased at learning of her worldly motive for desiring the Sacrament of Baptism. He did not hesitate to express his opinion, adding that he did not consider himself justified to admit her to the Catholic Church unless she came with a purer intention. As a result of the conversation the young woman was not baptized and remained a Jewess.

Question.—It is asked now, was the pastor correct in his action? Interest is added to the case by the fact that other worldly motives, such as marriage, enter sometimes into conversions.

Solution.—Our case is one of Baptism of an adult. Adults can be admitted to Baptism only if they apply properly prepared, induced by proper motives, and of their own free will. Hence the *Rituale Romanum* prescribes "Si quis adultus sit baptizandus, debet prius secundum apostolicam regulam in christiana fide ac sanctis moribus diligenter instrui et per aliquot dies in operibus pietatis exerceri eiusque *voluntas et propositum* saepius explorari et nonnisi sciens et volens probeque instructus baptizari." The most important condition for the validity of Baptism is, therefore, on the part of the adult candidate, the intention to receive the Sacrament. The *purity*

of the intention, however, is not included in the condition, therefore if some one is moved for the reception of Baptism also by secondary, worldly purposes, the Baptism is on that account not invalid.

Regarding the *licitness,* however, it is to be observed that St. Augustine in his book *De Fide et Operibus* (c. 6) writes: "Ad percipiendum baptismum non sic admittendi homines, ut nulla ibi vigilet diligentia, ne sanctum canibus detur." Hence Benedict XIV., in his Constitutio *Postremo mense* (a. 1747. n. 41) cautions: "magna hic vero diligentia opus est, experientia edocente, Hebraeos seu mulieres seu puellas matrimonii causa, quod nimirum christianum aliquem depereant: mares autem christianae fidei desiderium affectare, quod matrimonii iam contracti laqueos declinare copiunt et uxorem Hebraeam relinquere." In such cases, and whenever the reception of Baptism is plainly regarded as a business matter, the application would have to be denied. If, however, a Jew has the honest intention to be baptized, though as a secondary motive he sees in it a worldly advantage, such a one should without any difficulty be admitted to Baptism, because a great spiritual benefit is thus bestowed upon him as also on his posterity. The benefit to himself results from the fact that he receives the one Sacrament without which no man can be saved; he is admitted to the Church out of which there is no salvation; and in his last hours he will receive the Sacraments and thus be saved, whereas in the Jewish religion he would die in his sins, without the Sacraments. The benefit to his posterity is obviously the fact that his children will be raised in the true religion, whereas otherwise they would be raised as Jews. This is exactly the reason why even Pope Gregory the Great did not hesitate to make the Jews more willing for conversion by holding in view worldly benefits, because even if these Jews did not become Catholics with an entirely pure intention, it was to be remembered

that their descendants, raised in the Christian faith, might be an honor to the Church: "Aut ipsos aut eorum filios lucramur," the great Pope writes in his letter, ad Cyprianum Diaconum (Gregor. M. epist. v. 8). "Pervenit ad me, esse Hebraeos in possessionibus nostris, qui converti ad Deum nullatenus volunt. Sed videtur mihi, ut per omnes possessiones, in quibus ipsi Hebraei esse noscuntur, epistolas transmittere debeas, eis ex me specialiter promittens quod quicumque ad verum Dominum Deum nostrum Jesum Christum ex eis conversus fuerit, onus possessionis eius ex aliqua parte imminuetur. Quod ita quoque fieri volo, ut si quis ex eis conversus fuerit, si solidi pensionem habet, tremissis ei relaxari debeat; si tres vel quatuor, unus solidus relaxetur. Si quid amplius, iam iuxta eumdem modum debet relaxatio fieri, vel certe iuxta quod Dilectio tua praevidet: ut et ei qui convertitur, onus relevetur et ecclesiastica utilitas non gravi dispendio prematur. Nec hoc inutiliter facimus, si pro levandis pensionum oneribus, eos ad Christi gratiam perducamus; quia et si ipsi minus fideliter veniunt, hi tamen *qui de eis nati fuerint, iam fidelius baptizantur. Aut ipsos ergo aut eorum filios lucramar.* Et ideo non est grave, quidquid de pensione pro Christo dimittimus . . ." If it is allowed, therefore, according to Pope Gregory, to induce some one through the prospect of worldly benefits to accept the Christian faith, it is even more permissible to baptize an adult who of her own free will demands Baptism, even though she has the expectation to be advanced in her worldly position. It would be unwise to refuse Baptism to one who comes with an intention not entirely pure, because even if this convert may not become a zealous Catholic, at least all his descendants will be won for the Church. The answer to the question asked follows from these considerations.

XL. REITERATION OF BAPTISM

Case.—Sylvia, an infant who appeared to be at the point of death, was baptized hurriedly by her mother, Camilla. In after-years mother and daughter often spoke together about this Baptism and gradually they became convinced that it had not been administered validly. They mentioned the matter to Sergius, their pastor, and were by him admonished to put the matter from their thoughts, as he felt satisfied that the Baptism was valid. But they continued to importune him to repeat the Baptism, and as he saw the matter was preying seriously on their minds, he finally consented to baptize Sylvia *sub conditione.*

Question.—1. Can the sacrament of Baptism be repeated without sacrilege?

2. Are there any penalties decreed against Rebaptizers?

3. Did Sergius act rightly in yielding to the request of Sylvia and Camilla?

Solution.—1. In the Tridentine Profession of faith it is stated that Baptism, Confirmation and Orders cannot be reiterated without sacrilege. These sacraments imprint an indelible character on the soul, and consequently when they have been once rightly administered, their further valid reception becomes impossible. The attempt to confer or to partake of them anew would be nothing but a hollow mockery on the part of minister and recipient. The case is different when one of these sacraments has been administered invalidly; for when a sacrament has not been really received, there can be no question of reiteration. Indeed, since Baptism is necessary for salvation, it not only may, but must be, repeated whenever a previous Baptism was either certainly or probably invalid. In the

former case the Baptism should be reconferred absolutely, in the latter case, conditionally (S. C. P. F., 17 Apr., 1777).

A Baptism is to be considered as probably invalid when there is real reason for doubting whether some essential requisite of the sacrament was wanting, e.g., when doubtful matter or form has been used. If anxiety arises that is not supported by any good reason, as happens with scrupulous persons whose vain fears make them uncertain about their actions and intentions, it should be dismissed from the mind as unworthy of attention. Only doubts that are objective and well founded ought to be considered. To repeat Baptism, Confirmation or Holy Orders, even conditionally, because of doubts that are plainly insufficient, would be a sacrilege for the same reason that an absolute iteration is a profanation of sacred things.

It may happen, though, that a *ratio dubitandi,* while real, is yet very slight. Such a doubt does not impose itself on the judgment of a prudent man, yet is he not obliged to reject it, especially in a matter of such vital import as the validity of Baptism. Hence some grave authorities hold that a troublesome scruple of which the conscience cannot rid itself, provided it be not altogether unreasonable, is a sufficient reason for repeating *sub conditione* a necessary sacrament such as Baptism.

2. Formerly one who solemnly and publicly rebaptized, and also the person who knowingly submitted to rebaptism, incurred irregularity, which prevented the reception of higher orders. But this irregularity has been abolished. In the list of irregularities given in the new Codex this one does not appear, and hence according to the general principles of the Codex it must be considered as abolished.

3. Sergius was not justified in baptizing Sylvia, if he did so

merely to gratify a whim indulged by her and her mother. If he felt no doubt about the first Baptism, his duty was plain. The desire to please or even to relieve distress would not justify him in carrying out a farcical simulation of the sacrament or in attempting to baptize one who to his knowledge was already baptized.

However, the persistent fears of Camilla and Sylvia about a Baptism administered hurriedly and under circumstances that might easily lead to error leave some room for doubt. If Sergius, on second thought, decided that their reasons, although slight, were not clearly absurd, he could, with a clear conscience, repeat the Baptism, although, of course, he was not obliged to do so. Whether he was guilty of sacrilege, then, will depend on whether he acted in *bona fide* or in *mala fide*.

XLI. NECESSITY OF CONFIRMATION

Case.—Sabinus, a middle-aged man, has never been confirmed. He neglected this in his younger days, and now, although Augustus, his pastor, has several times invited him to receive the sacrament, he has always absented himself on the day when Confirmation was administered. He feels that to receive Confirmation at his age will be regarded as a sign of inferiority and will expose him to ridicule. Finally in confession he is told by Augustus that these dispositions amount to contempt of the sacrament, and he is dismissed without absolution.

Question.—1. Is there an obligation of receiving Confirmation?

2. Did Augustus act rightly?

Solution.—1. We must distinguish between an obligation *per se* and an obligation *per accidens*. The former exists when a certain thing is obligatory because it is an indispensable means of salvation (*necessitas medii*), e.g., Baptism; or because it has been commanded (*necessitas praecepti*), e.g., assistance at Mass on Sundays. An obligation exists *per accidens* when duty arises not from any such intrinsic reasons as the foregoing but from reasons that are extrinsic, e.g., when the neglect of some means, which in itself is conducive but not necessary to salvation, would cause spiritual injury to one's self or others.

It is certain that *per accidens* a person may be held, and even gravely, to the reception of Confirmation. Thus one who felt an especial need of the graces of this sacrament on account of his own weakness or the perilous times in which he lived could not be excused from sin if he wilfully neglected the opportunity to receive it.

He would be wanting in the duty of charity to self which requires that we do not endanger our own salvation. Of course, if such a one had recourse to prayer or other means of guarding against his spiritual dangers, his presumption would be less and the neglect of Confirmation would probably not exceed a venial sin. Another instance in which Confirmation would be obligatory *per accidens* arises when the refusal to be confirmed causes great scandal or savors of contempt of sacred things.

All theologians agree that apart from these cases of accidental obligation there does exist some obligation *per se* to receive Confirmation. They are very much divided, however, as to the manner in which the obligation binds, whether gravely, or lightly. Certainly Christ did not make Confirmation an indispensable requisite for salvation (*necessarium necessitate medii*), but from the very fact that He instituted it as a sacrament, He also willed that it should be received.

The fact of its institution as a sacrament does not prove, however, that Christ commanded the reception of Confirmation as a grave obligation. For though all the sacraments are necessary, not all are necessary in the same degree. Some are so necessary that without them salvation is impossible (*necessaria ad esse*), others are so necessary that without them salvation is less easily attained (*necessaria ad melius esse*). Further it is not certain that the positive law makes the reception of Confirmation a grave duty. It is true that Pope Benedict XIV. says in the Bull Etsi Pastoralis: "*Monendi sunt* [*qui non sunt confirmati*] *ab Ordinariis locorum, eos gravis peccati reatu teneri, si cum possunt ad Confirmationem accedere, illam renuunt ac negligunt.*" But this Bull dealt with the case of certain Greeks who would not receive Confirmation because they obstinately refused to acknowledge as invalid the Confirmation they

had received from their priests. For them the reception of Confirmation was a grave duty *per accidens,* in order that they might retract their errors and repair the scandal they had given. It does not follow, then, from the above words that the faithful are obliged *per se* and *sub gravi* to receive Confirmation.

2. Augustus acted rightly when he earnestly endeavored to persuade Sabinus to approach Confirmation, for it is the desire of the Church that all her children be brought to the spiritual maturity this sacrament confers. But his later action in refusing absolution was imprudent, if not unjust. For although the reasons that Sabinus gave for his neglect of the sacrament were foolish, they did not show that he was acting from contempt. Augustus should have considered that the view that Confirmation is virtually contemned when a favorable occasion to receive it is neglected, is far less probable than the opposite opinion, which holds that neglect of Confirmation is to be considered as contempt only when it is intended as a mark of disregard and disrespect. In any case it would have been the part of prudence to leave Sabinus in *bona fide* so long as no good result could have been foreseen from admonishing him about his duty.

XLII. SPONSORS OF CHILDREN RECEIVING CONFIRMATION

Case.—Father Gilbert, at a Confirmation in his parish, acted as one of the sponsors for the boys, while a sister of the parish school exercised the same office for the girls. On another occasion he asked parents to stand as sponsors for their own children.

Questions:

1. Does the Church allow nuns to be sponsors for children in their reception of Confirmation?
2. Are parents allowed to be sponsors for this Sacrament?
3. Are priests permitted to act in this capacity?

Solution.—1. The Church has enacted a law whereby Religious (*stricte dicti*) are forbidden to act as sponsors either for the Sacrament of Baptism or of Confirmation. The reason for this is clear. The Church has always looked upon the obligation of a sponsor as a real and a sacred one. She commands under pain of sin that sponsors be had for both these Sacraments and she desires that the faithful be instructed as to the meaning and duties of this position. Moreover, she wishes them to realize that sponsorship is no mere matter of form. Hence she seeks to admit only those who can properly and conscientiously fulfill the duties of this relationship. Now Religious, at least those who have taken solemn vows, cannot live up to the obligations demanded of sponsors. They are no longer masters of their own time or will and the duties of community life absolutely interfere with the fulfillment of the duties of sponsors. Hence the Church wisely declares that she will not accept such Religious as god-parents, even for Confirmation. Members of religious Orders who are not bound by solemn vows are not

affected by the letter of this law; they are, however, by its spirit; for the selfsame reason operates in their case, as in the case of the religious of the solemn vow. While this view would hold true as a general rule, yet circumstances might arise which would make an exception advisable or even necessary. Where no other sponsors could be had then Nuns of the simple vow, as, for instance, Sisters of Charity, or Dominican or Franciscan Sisters, could legitimately be used as god-parents. Such was the tenor of the decision of the Sacred Congregation of Rites, February 15, 1887.

Again, if a religious is to be confirmed, then, indeed, a fellow religious may and should be selected as a sponsor, for in this case the purpose of the Church in requiring sponsors can be better realized by a religious than by one who is not. So that, absolutely speaking, when necessity requires it, a Nun (positis ponendis) may act as a god-parent.

2. Parents may act as god-parents for their own children when there is no one else to assume this role. However they are not sponsors in the legal sense of the term, but only act the part *materialiter,* by assisting the priest to carry out the ceremonies. Hence the Holy Office decided (Sept. 15, 1869), that spiritual relationship was not produced by such sponsorship.

3. Priests are permitted to become sponsors except when they administer the Sacrament. In this latter case they are strictly forbidden to assume the rôle of sponsor. This was manifested by the decree of the Congregation of the Propaganda, September 21, 1843.

XLIII. NON-ALCOHOLIC WINE—MATERIA VALIDA?

Case.—The priest Titus is opposed to alcoholic beverages, and for this reason strives to take as little wine as possible in the celebration of Holy Mass. At the offertory he uses so little that the prescribed proportion of wine and water is barely preserved; then he takes only a few drops for the *purificatio calicis* and the *ablutio digitorum.* One day he comes upon an advertisement offering a non-alcoholic wine. The genuineness of the wine and the absolute absence of alcohol are guaranteed by the advertiser. Titus now rejoices that he has found the right thing, and in future he is going to celebrate only with non-alcoholic wine.

Question.—Is this permissible?

Solution.—Before replying to this question we should first of all subject the past practice of this priest to objective criticism. The rubrics of the Missal (VII. 4) say plainly . . . *"ponit vinum in calicem. Deinde . . . infundens parum aquae in calicem."* With these words a certain proportion of wine and water is indicated, of water there must be less than of wine. *"Si ei (sc. vino) admixtum tantum aquae, ut vinum sit corruptum: non conficitur Sacramentum" (de defectibus IV, I).* The authors endeavor to determine absolutely the quantity of water and wine, thus to give a more definite expression to the prescribed proportion. St. Alphonsus says, in his book on the ceremonies of Holy Mass: *"Deinde tenens calicem parum pendentem vinum in quantitate convenienti, id est quantum uno haustu sumi potest, ex parte inclinata calici immittit."* Similarly writes De Herdt (*S. L. Praxis I. n.* 226), and others. Thus it is established that not a great quantity of wine is requisite for celebra-

tion. To the wine then must be added a very small quantity of water. *"Eucharistiae Sacramentum, cuius materia est panis triticeus et vinum de vite, cui ante consecrationem aqua modicissima admisceri debet,"* it is stated in the *Decretum pro Armenis* of the Council of Florence (Denzinger, *Enchiridion, n.* 593). Similarly the Provincial Council of Vienna prescribed: *"In aqua admiscenda sollicite caveatur, ut permodica sit et vini naturam immutando plane impar"* (*tit.* III. c. V.). Lehmkuhl (*Theol. Mor.* II. *n.* 121) describes this small quantity with the words: *"una alterave gutta."* C. Marc (*Instit. Mor. n.* 1524) holds that one drop suffices, *"modo sit sensibilis."* In support of this opinion there is quoted a passage of St. Thomas, in his *Summa Theol.* (3 *qu.* 74. *a.* 8): *"Sufficit ad sacramenti huius significationem, quod sentiatur aqua, cum apponitur vino; non autem oportet quod sit sensibilis post mixtionem."* Since according to the authorities (*cf.* S. Alphonsus, *Theol. Mor.* L. VI *to.* 3, *n.* 210) one eighth, and if the wine is strong even one fifth, may be water, it is plain that if but little water is taken, a very small measure of wine is required for the consecration. Hence it is simple to carry out that which the authors indicate with the words: *"Quantum uno haustu sumi potest."*

Regarding the amount of wine to be used at the *purificatio calicis,* St. Alphonsus says (*l. c.,* p. 114): *"Tantum vini infundere faciat, quantum fuit consecratum."* De Herdt is again in perfect accord with this. At the *ablutio digitorum* one takes usually the same amount of liquid; since here more water than wine must be taken (*"major autem semper quantitas aquae quam vini accipienda est"* de Herdt, I. *n.* 270), a small quantity of wine, a few drops, will suffice.

If all this is observed, then the entire quantity of wine used at a Holy Mass is so small that an injurious influence upon the health

is under normal conditions certainly not to be thought of. Regarding the validity of the Masses hitherto said by the priest Titus, only an actual investigation of the *materia vini* used can give us information. He surely has not used for celebrating Mass an aged and strong vintage. If the wine be weak, then, according to the authorities (Lehmkuhl, *l. c.*), *"cavendum est, ne nimia aquae copia affundatur, maxime si vinum est debile; nam usque ad tertiam partem aquam admiscere, dubiam reddere potest materiam consecrationis."* The admixture of a third part water to the wine makes it a *materia dubia;* indeed, in the opinion of many persons (*"secundum humanam aestimationem et usum"*) this would no longer be considered wine. Though we may, nevertheless, accept this *materia* as *valida,* and thus presume the validity of the Masses said, there can be no question that this *materia dubia* is *illicita,* because, as every book on moral theology teaches, when it is a question of the validity of a sacrament, one may not without compelling cause, such as extreme need, ever make use of a *materia dubia. Tutius eligendum est.* Considered objectively, therefore, the practice of Titus has been wrong and sinful.

Will the modern invention of non-alcoholic wines now help him to escape his difficulty? According to Haine *Theol. Mor. Elem.* III. p. 26) the sacrificial wine must have the following qualities: (a) *de necessitate sacramenti debet esse* 1. *vinum de vite,* 2. *usuale i. e. potabile,* 3. *in sua specie incorruptum;* (*b*) *de necessitate praecepti debet esse* 1. *purum,* 2. *mundum,* 3. *non congelatum,* 4. *non quod coeperit acescere vel corrumpi vel fuerit aliquantulum acre,* 5. *cum modica aqua mixtum.* That the wine must be good is expressly directed by the Provincial Council of Vienna, which says: *"Intolerabile esset, si ad tantum mysterium adhiberetur vinum, quod convivis apponere ecclesiae rectorem puderet."* Hence a good wine must be

employed in offering up the Holy Mass, and, furthermore, it must be genuine. *"Quamdiu secundum humanam aestimationem et usum panis et vinum substantialiter incorrupta sunt, manent materia valida; si certo corrupta sunt, invalida evadunt, si dubie, materia erit dubia"* (Lehmkuhl *Theol. Mor.* II. *n.* 118). Now is a non-alcoholic wine *secundum humanam aestimationem et usum* a genuine wine, a *materia incorrupta?*

Non-alcoholic wine is the product of an artificial procedure, not the product of natural fermentation. The fresh grape juice is brought to a high temperature, so that the albuminous matter is expelled, this clarifies the juice and it is made to keep in good condition by subsequent sterilization. This sterilized juice is then poured into sterilized bottles, and is then known in commerce as non-alcoholic wine. It keeps well as long as the bottles remain unopened, and it actually contains not a trace of alcohol, all fermentation having been prevented. This wine, therefore, is not produced by natural fermentation, but made artificially, and it is not the natural product called "wine" but an artificial wine. For the natural wine there is required, on the one hand, the ripe, unadulterated grape juice, secured from grapes in the ordinary way (*vinum de vite modo consueto extractum*), on the other hand, the natural, alcoholic fermentation. If through the addition of water and sugar the original quantity of wine is increased threefold, or even fivefold (as is done in some methods of making grape juice) this is a *notabilis mutatio et permixtio alienae materiae* (Lehmkuhl *T. M.* II. 119) and the wine obtained in such fashion is not *materia valida.* Nor can we consider as *materia valida* a wine that is not produced by natural fermentation, and that is utterly lacking alcohol. All genuine wine contains alcohol, usually 9 to 12 per cent., although certain heavy wines, such as Port, contain as much as 23 per cent.

Every wine, therefore, contains a quantity of alcohol, and if its original percentage of alcohol is very low then the natural wine will not keep, and more alcohol must be added. If this takes place while the wine is in the making, and is done by adding spirits of wine (*dummodo spiritus extractus fuerit ex genimine vitis*) and increased at most to 12 per cent., then this manipulation is expressly permitted for altar wines (C. S. O., July 31, 1890), because there is not added any foreign matter to the wine.

Alcohol belongs to the nature of wine, it is an essential constituent thereof. Take away this constituent, and the liquid may still appear to many as wine, yet *secundum humanam aestimationem* it is wine no longer, *"non ex colore, odore et gustu dignoscitur esse verum vinum,"* it is a *materia certo corrupta,* and hence *invalida.* The Sacred Congregation of the Holy Office replying to the question: *"Utrum licitum sit ad S. Missae sacrificium conficiendum uti vino ex musto obtento, quod ante fermentationem vinosam per evaporationem igneam condensatum est?"* decreed Aug. 5, 1896: *"Licere, dummodo decoctio hujusmodi fermentationem alcoolicam haud excludat, ipsaque fermentatio naturaliter obtineri possit, et de facto obtineatur."* Non-alcoholic wine is, therefore, unfit to be used in saying Mass, and Titus must not make use of it. Neither is it necessary to do so. If he is sick, and his stomach will not take pure wine, then he should omit the celebration until his condition improves. Otherwise he should use a light wine, one of the many wines of small alcoholic percentage. At the offertory he should take very little water, so that he will need but such a small amount of wine that the alcohol taken is hardly worth mentioning. He need, then, not fear any harm to his health.

XLIV. RECEIVING HOLY COMMUNION SEVERAL TIMES ON THE SAME DAY

Case.—Regina, a pious woman, is so fond of frequent Communion that at times she receives twice, even three times, on the same day, always at different churches of the town. Some people brought this to the attention of Father Evodius, pastor at the church where Regina usually receives Holy Communion first. The priest sends for Regina, warns her that this is not allowed, and threatens to withdraw from her for a certain period the right to receive, unless she discontinues her unlawful action. Regina in reply points out that priests sometimes celebrate Holy Mass more than once, as for instance on Christmas, and that they communicate each time. Evodius then says that the repeated celebration of Holy Mass on one and the same day is under certain circumstances permitted by the Church, and is strictly regulated, but that otherwise a repeated Communion on one and the same day is forbidden by the Church.

Question.—What is to be said about this case?

Solution.—1. In the hard times of persecution the early Christians had a very special need of the "Bread of Angels," hence they carried it home in order to fortify themselves for the possible martyr's death; this custom was not discontinued until the fifth century. It may thus have happened that they received in the early morning, during Mass, and again later in the day if threatened with death. Frequent, even daily, Communion was zealously practised in those times, as also daily celebration of Holy Mass. When, however, the Christian religion came under State protection conditions and customs changed.

2. The Holy Eucharist was confided by Christ to His Church, to be administered most reverentially as the sacrifice of the New Law and as the Communion of the faithful. That to this, her supreme Holy of Holies, should be shown due reverence and that it should be administered in a dignified manner is the task of Holy Church, and for this task she makes suitable laws and ordinances. The priests carry out the dignified administration of the Eucharist by conscientiously following the precepts of the Church, and a fruitful reception on the part of the faithful is to be expected if they obediently submit to the guidance of the Church. Any improper conditions must, of course, be rectified by the priest.

3. May Holy Communion be received lawfully more than once on one day? We omit here all reference to the repeated celebration of Holy Mass. Is there an ordinance, a positive law, which prohibits or allows the frequent reception of the Eucharist in Communion on the same day?

Suarez (*Disput.* 69, *sect.* 4) writes: *Dies a media nocte ad mediam noctem est computandus,* as in the case of the *ecclesiasticum jejunium naturale.* He then proceeds to say: *Jure divino non est prohibitum, saepius eodem die communicare; stando in solo jure divino nulla est talis prohibitio, quia nec scripta est nec tradita nec sola ratione probari potest; ex esidem juribus potest sumi proportionale argumentum, quia saepius eodem die sacrificare, non est prohibitum jure divino; ergo nec communicare. Unde, sicut Papa dispensat interdum ut aliquis eodem die saepius sacrificet, ita posset dispensare in iterata communione extra sacrificium; non est ergo prohibitum jure divino.*

Now Suarez considers the objection: *Dices: nec singulis horis communicare vel etiam saepius eadem hora esset prohibitum,* and answers: *Resp. verum esse, de tota hac re positivo jure divino nihil*

esse declaratum, sed prudentiae, quam jus ipsum naturale dictat, relinqui, quae dictat, ea cavenda esse, quae contemptum vel irrisionem sacramenti parare possunt, concluding: *ideo Ecclesiastica providentia in his modum et ordinem adhibuit.*

Suarez had already before this stated: this prohibition to receive frequently on the same day follows *ex jure humano praecipue ob reverentiam tanti sacramenti, ne scilicet ob nimiam frequentiam vilescat.*

4. What law of the Church is there decreeing that Communion is allowed only once on the same day? St. Thomas speaks only of a *Consuetudo Ecclesiae* (*III, qu.* 80, *art.* 10) and in the fourth objection he says: *"Major esset frequentia, si homo pluries in die sumeret hoc sacramentum. Ergo esset laudabile, quod homo pluries in die communicaret, quod tamen non habet Ecclesiae consuetudo."* Therefore, he does not adduce a precept of the Church further than the custom, practice and usage of the Church; a positive commandment, a *lex ecclesiastica expressa,* was not known to him. And in solving this objection St. Thomas produces only a *mystica congruentia* saying: *"Ad* 4. *dicendum, quod quia Dominus dicit Lc.* 11: *"Panem nostrum quotidianum da nobis hodie," non est pluries in die communicandum, ut saltem per hoc, quod aliquis semel in die communicat, repraesentetur unitas passionis Christi."*

Let us hear another authority. Claud. Lacroix (I. 6, 673) asks and answers the question: *An Licitum sit saepius una die communicare? Resp. Ordinarie non est licitum, uti colligitur ex C. Sufficit* 53. *De consc. d.* 1. *Hoc ipsum probat praxis Ecclesiae ac usus fidelium.*

5. The authorities appeal as we see to *Ecclesiae consuetudo, praxis, usus.*

What is a *legitima consuetudo?*

Gratian undoubtedly gives the proper definition (*c.* 5, *d.* 1): *Consuetudo est jus quoddam moribus institutum, quod pro lege suscipitur, cum deficit lex.*

The *legitima consuetudo* is likely to become the law, as not everything in the Church must be regulated by written law. The universal custom prevailing throughout the centuries in the Church, and the interpretation and usage of the Christian people, often have the authority of a written law in the Church. And where there is felt no need, the Church does not usually make special laws and ordinances.

6. What about permission or obligation in the case of a Christian who has received Holy Communion, and upon the same day is brought by sickness or accident so near death that the Viaticum should be administered to him? This has been a mooted question on which learned theologians took opposite sides. Some held that it was not permissible to receive the Viaticum if one had already communicated that same day, as the law of the Church forbids one to receive Communion oftener than once a day. But this reason can no longer be maintained, as the Code (canon 864) declares: "Etiamsi eadem die S. Communione fuerint refecti, valde tamen suadendum ut in vitar discrimen adducti denuo communicent."

7. While a pastor or confessor has not the right to impose a Church censure of excommunication, or authoritatively to declare that anyone has incurred such, he has at his disposal a temporary *prohibitio* for preventing and discouraging an improper treatment of the Blessed Sacrament; to exercise this is not only his right, it is also his bounden duty. Between saying Holy Mass and receiving Holy Communion there is an essential difference. The celebration of Mass is a liturgical action executed by the priest as Christ's representative, in the name of the Church, and the Church can, for

important reasons, sanction the repetition of the sacrifice; moreover, the Mass has an objective value and is a special operation of grace for all mankind, in a degree according to the intention and application of the celebrant. Holy Communion, however, bestows a subjective gift of grace upon the worthy recipient, though he may also obtain graces for others.

XLV. WHAT ARE THE CONDITIONS UNDER WHICH THE SICK MAY RECEIVE HOLY COMMUNION THOUGH NOT FASTING?

Leaving out of consideration the dangerously sick, whose condition calls for the last sacraments, we may consider of the other sick three classes, who can remain fasting until holy Communion can be given them either not at all, or only with great hardship. We do not include in this classification religious houses that have their own priest; for there the priest can give Communion soon after midnight, so that fasting would cause no inconvenience. We refer to the conditions in every-day life in which the sick must wait until some time in the morning to receive.

The first class embraces patients who have received the last sacraments and whose condition has not appreciably bettered. Moralists teach unanimously that such persons may receive without fasting. But they disagree as to how often. St. Alphonsus accepts the *communior sententia* that such sick persons may receive once a week (even daily if they have been used to receive daily), and as Benedict XIV. (*De Syn. Dioec.* lib. 7, c. 12) bids the bishops to require pastors to give Communion to such sick persons *iterum et tertio,* and since the bishops are empowered to punish pastors who are insubordinate on this point, we may without danger of appearing lax say that such sick may receive on as many days as they wish, even without fasting. We go still further and say the confessor should, unless the patients' spiritual condition makes this inadvisable, urge them to receive frequently, not anxiously counting how many days have gone since their last Communion. Scruples of the patients about fasting he may remove by informing

them that they may take whatever drugs or food are ordered for them. No need of asking anxiously how often they used to receive before their illness—in sickness persons have even more need than in health for Holy Communion as their spiritual food, nor need inquiry be made until what hour in the morning they are able to refrain from food or medicine. Moralists in general, and St. Alphonsus and Benedict XIV. in particular, speak simply of *non jejuni* without examining at what hour of the morning the priest should take the sacraments to the sick in order to let them remain fasting. All this applies to those who have received the last sacraments, and who are still in about the same condition.

The second class embraces those who, on account of stomach or nerve trouble, or kindred ailments, are not able to remain fasting until the morning, although they are not grievously or dangerously ill. Not infrequently such persons can go about and do much work of mind or body, but they cannot fast without bad results. For such there is only one thing to do. They must make application to the *S. R. et Universalis Inquisitio,* the supreme tribunal for matters of faith and morals. If they present a testification *utriusque medici,* physician and confessor, preferably through the bishop, they will without difficulty receive permission to partake before Communion of something *per modum potus* (more about this further on), and according to circumstances this permission is granted for receiving more or less frequently. Without this permission they are, of course, not allowed to partake of anything before Communion.

To the third class belong those who have been bed-ridden for a considerable time, but are not so ill as to call for the last sacraments, yet on the other hand can not strictly observe the command to fast before receiving, and about whom no certain hope exists

that they may soon recover. For such sick persons Pope Pius X. has provided, in a very generous manner, by a decree of the Congregation of the Council, December 7, 1916. In a previous decree (December 20, 1905) the Pope exhorted the faithful to more frequent and even daily Communion, and required as the condition for this frequent reception of the sacraments only the state of sanctifying grace and the right intention, thus rejecting the rigor of Moralists and ascetics who often demand most minute precautionary measures and conditions. Referring to this decree an eminent ecclesiastic of Belgium suggested to the Congregation that if the wish of the Holy Father for more frequent and even daily Communion were to be carried out in the widest circles of the Church, then these sick, who often long for Holy Communion, should be given the same opportunity. On September 15 this matter was laid before the Congregation and it was decided to recommend to the Holy Father that the law of the Church for such sick persons should be amended, so that Holy Communion might be given to them oftener. It was proposed that the bishops should be empowered to give these sick persons the privilege to receive, on the great feasts for instance, even after partaking of some food. The Holy Father went even beyond this, and thereby manifested again his desire to promote the frequent reception of Holy Communion.

The two passages from the decree of the Congregation of December 7th, 1916, which are of importance here, read: *quaesitum est, si quo forte modo consuli posset aegrotis diuturno morbo laborantibus et eucharistico Pane haud semel confortari cupientibus, qui naturale jejunium in sua integritate servare nequeant; . . . benigne concessit (pontifex), ut infirmi, qui jam a mense decumberent absque certa spe ut cito convalescant, de confessarii consilio*

Sanctissimam Eucharistiam sumere possint semel aut bis in hebdomada, si agatur de infirmis qui degunt in piis domibus ubi Sanctissimum Sacramentum adservatur, aut privilegio fruuntur celebrationis Missae in Oratorio domestico; semel vero aut bis in mense pro reliquis, etsi aliquid per modum potus antea supserint.

There is question here of sick persons who, for at least a calendar month, have been bedridden, and whose early recovery can not be expected with certainty; not of such, therefore, who suffer of a slight illness, but of persons seriously ill, yet not on this account in danger of death. It is further said *absque certa spe ut cito convalescant;* so long, therefore, as there is no moral certainty (such as the opinion of the attending physician would give) that the patient will soon, perhaps in a week, recover his strength sufficiently to get out of bed, the patient has a right to the benefit of the decree, and may receive Communion even after having partaken of food or drink. The word *decumberent* does not imply that the patient must steadily keep to his bed. There are diseases that make patients feel more comfortable if they use an armchair. The decree concerns the sick who cannot remain fasting (until morning, as explained under 1 and 2). Those sick who can remain fasting without any particular detriment must not partake of anything before receiving, and they are strictly bound by the ecclesiastical law. The sick considered under 2 do not belong here, for while of them it may be said that a speedy recovery cannot be looked for, yet it cannot be said that they are *decumbentes.* They must therefore make their appeal to the Inquisition at Rome.

The decree distinguishes two classes of such sick persons; first of all those who sojourn in *piis domibus;* by these are meant the inmates of convents, of schools kept by Religious, hospitals, seminaries, etc., having their own chapel, where the Blessed Sacrament

is kept, or where Mass is said. Then the decree goes on to speak of patients not inmates of such houses. The former may twice a week partake of food, *per modum potus,* before receiving, the latter twice a month.* For both classes, however, the decree provides *confessarii consilio.* The reason for this is obvious. The Church has given the decision about receiving Holy Communion into the confessor's hands. He alone decides whether the penitent is worthy to receive; he alone may judge as to how often. We may translate the words *de confessarii consilio:* "with the confessor's permission."

It is quite clear that the confessor of penitents, who according to the decree of December 20th, 1905, may receive twice a week, or twice a month, cannot prohibit them from previously taking food, all the more as the permission of the confessor is directly concerned only with the frequency of receiving holy Communion, and only indirectly with the partaking of food. The permission to receive presupposes the other permission. The Pope allows the previous use of food, or drink, as often as the confessor allows such patients to receive, to the limit of twice per week, or month. What must we understand by *per modum potus?* The holy Inquisition explained this under September 7th, 1897, and this explanation was ratified by the Pope on September 10th, 1897: *"quando si dice per modum potus, s'intende bensi che si possa prendere brodo, caffè od altro cibo liquido, in cui sia mescolata qualche sostanza, come p. e. semolino, pangrattato ecc., purche l'insieme non venga a perdere la natura di cibo liquido."* One may therefore take broth, coffee, or other liquids, such as milk, tea, chocolate, and of course

* Canon 858 of the new Code extends this privilege to once or twice a week. Thus after Pentecost of 1918 invalids, whether or not they reside in a dwelling where the Blessed Sacrament is kept, may, *de prudenti confessarii consilio,* receive Holy Communion even after having taken medicine or liquid refreshment.

water, and with these may be mixed solid food, as, for instance, cereal or bread crumbs; the whole, being boiled perhaps, provided it does not lose its character of liquid food, may be partaken of before Communion. In other words any liquid nourishment may be taken; this would seem to exclude alcohol.

Finally we ask what is meant by *aliquid?* It means that hunger should not be fully satisfied but that the patient should be aided in his bodily condition to receive the Holy Eucharist with the requisite devotions. The contents of a coffee cup may, with regard to the intention of the law, not be considered too large a quantity. But if the doctor, or the patient's experience, require a larger quantity, even as much again, the confessor in our opinion may agree to this. Much depends upon the individual himself and the character of his malady. We must not identify *aliquid* with *minimum.* Fasting is broken by a *minimum.* When therefore the Church suspends this command to fast in a certain case, and this she did by the decree of December 7th, 1906, the principle *parum pro nihilo putatur* applies.

In conclusion it is to be pointed out that the decree speaks only of Holy Communion, and not of saying Mass. The decree allows such patients, as above described, be they laymen or clerics, priests or bishops, to partake of something under certain restrictions before *receiving* Holy Communion, but to say Mass non-fasting is a different matter. It is not to be expected that such a privilege will be generally decreed for saying Mass, as Rome is minded to insist strictkly on fasting before saying Mass. Leo XIII., when his physician would not let him celebrate solemn Mass toward noon, on his twenty-fifth papal jubilee, unless he partook of something first, said Mass early in the morning, fasting, and then merely assisted at the solemn high Mass in St. Peter's, celebrated by a Cardinal.

XLVI. USE OF THE STOMACH PUMP AND JEJUNIUM NATURALE

Case.—Father John is directed by his physician to wash out his stomach every morning. Father John is worried and asks:

Questions.—1. How long after saying Mass must I wait before washing out my stomach?

2. May it be done before Mass?

Solution.—1. Regarding the first question there may be cited St. Alphonsus, who, in his *Theologia Moralis* (*Lib. VI. n.* 225) writes: *"Certum est apud omnes, saltem inter spatium horae species in omnibus immutari. Bene tamen advertit Tamb. quod, juxta qualitatem stomachi, magis vel minus calidi aut validi, species consummentur. Caeterum, generaliter loquendo, refert Lugo, plures medicos a se Romae consultos putasse in laico species intra minutum corrumpi, et in sacerdote intra medium quadrantem: quod utrumque approbat Bernal apud Croix; Immo Arriaga ibid. censet, in laico consummari intra* 5 *Pater et Ave; et in sacerdote postquam vestibus est exutus. Saltem post quadrantem a communione, etiam in sacerdote, tenet ut certum Lugo, et consentit Croix quoad sanos, species consummari."* However, modern physicians are holding a quite different view. There are those who declare that even in a healthy stomach the sacred species remain intact for half an hour, while in the case of certain ailments particles of the host may be found in the stomach even after three hours. How slowly digestion progresses in a sick stomach, may in our days be demonstrated by X-rays. It has been established that food which should normally have disappeared from the stomach in six hours, was still there after fully forty-eight

hours. Therefore, a priest suffering from stomach trouble would have to wait, after saying Mass, for quite some time before washing out his stomach. The question arises then if this might be done before Mass, and this may be done, as we are about to show.

2. Washing out the stomach before Mass is permissible, even if a little water should stay in it. As the reason Moralists state that at least nothing has been taken *per modum potationis: "Etsi quis antlia gastrica* (*vulgo pompa gastrica,* stomach pump) *aquam in stomachum traiiceret, eadem antlia eam eiecturus quia ad stomachum lavandum immisit, non idcirco violaretur ieiunium. Is enim nec manducat nec bibit,"* writes Ojetti (*Synopsis Rerum Moralium II.* 3. *n.* 2344, *p.* 2158, article *Ieiunium*). Lehmkuhl disposes of the case by a brief remark, but thereby touches upon other circumstances, by saying: *"Complures etiam censent, ieiunium eucharisticum non laedi ab eo, qui ope canalis stomachum lavat: cavendum tamen esse, ne canalis ille oleo sit inunctus"* (*Theologia Moralis II. p.* 125). For this he quotes other authorities, such as Noldin, and of this author's work the seventh edition; in the tenth and eleventh editions, that appeared in the interim, Noldin has somewhat changed his opinion and now writes: *"Qui ad eluendum stomachum ope alicuius instrumenti aquam sorbet et iterum reiicit, manet tamen ieiunus, etsi modica pars aquae in stomacho remaneat, quia nihil ad modum potus glutiendo sumitur. Quin etiam, ut videtur, tubum instrumenti oleo unctum in stomachum demittere licet, quin ieiunium solvatur"* (*III. n.* 149). In former editions, the sixth for instance, there it was stated, *"At non licet tubum instrumenti oleo unctum in stomachum demittere: sic enim vix fieri potest, quin oleum ad modum potus glutiatur."* For the probability of the opinion that the *jejunium naturale* is not broken by washing out the stomach, Ojetti advances another argument. The S. C. U. I., on April 23, 1890, granted to

a priest, with the Pope's approval, the permission *ut ante missam uteretur antlia gastrica ad lavandum stomachum.* This permission was granted because only the privilege had been sought, not a theoretical decision of the question. Since, however, a priest is hardly ever allowed to celebrate Mass *non jejunus,* this permission shows that the S. C. U. I. considers the *jejunium naturale* not violated by washing out the stomach.

XLVII. THE CELEBRATION OF HOLY MASS AND THE NATURAL FAST

Case.—Father Titus, suffering from illness for many months, has secured the privilege of a private oratory. Twice every week a priest friend celebrates Mass in this oratory, and Father Titus, by privilege of the decree of December 7, 1906, receives Holy Communion without fasting. One morning, feeling stronger than usual, and having partaken of nourishment by "drinking" the raw contents of two eggs, he feels the desire to celebrate Mass himself, instead of only receiving Holy Communion. His friend arrives and, finding Father Titus in the preparation to say Mass himself, he dissuades with some difficulty Father Titus from his intention.

Question: 1. Was Father Titus allowed to say Mass?

2. Could he at least receive Holy Communion?

Solution.—The decree of December 7, 1906, permits a sick person under certain conditions to receive Holy Communion even after he has partaken of some food *per modum potus;* this permission, however, must not be extended to the celebration of Holy Mass. Noldin sets forth: *"Sacerdotes hoc privilegio periculose non decumbentibus concesso, suppositis conditionibus requisitis, uti quidem possunt ad communicandum more laicorum, non item ad celebrandum."* (*Summa Th. Mor.* III[10], 157, e.)

Such permission is hardly ever given. Ojetti states: *"Gratiam celebrandi missam non ieiunis fere numquam solet concedere S. U. I."* (Synopsis, II[3], n. 2344, p. 2159.)

Cardinal Gennari asks the question, Can a priest obtain from the Holy See the privilege to partake before Holy Mass of some food

per modum potus? and he positively answers, "He can not. Such a privilege is never conceded to priests. It is sometimes given to a bishop, in order that he may not have to omit pontifical functions. The priest may, however, obtain from the Holy See permission to celebrate immediately after midnight." (*Questions de Morale, etc. n.* 255.)

2. Father Titus, after "drinking" two eggs, cannot even receive Holy Communion. If he cannot fast he may take some food *per modum potus* but *"Non licet sorbere ovum, quia non est cibus liquidus,"* as we find it stated by Ballerini Palmieri, who, however, adds *"At ovum caffeo dilutum, cum vere liquescat, videtur posse sumi."* (*Opus theologicum morale,* IV[3], p. 730.) This is also the view of Cardinal Gennari, whom modern authors like to quote as an authority on such questions.

XLVIII. THE DUTY TO HEAR MASS ON SUNDAYS

Cause.—Bertha, a Catholic, employed in a large department store, was ordered to work three successive Saturday nights to help taking stock. She obeyed the order, so as not to be deprived of her bread-winning position. On these Saturdays she reached home after midnight, exhausted from the long hours and tiresome labors of the day. She slept then till 1 P. M. the following day, and thus did not hear Mass. She felt she was not obliged to be present at Mass on any of these three Sundays. Her confessor, to whom she made her monthly confession, agreed that, under the circumstances, she was fully excused, and that she therefore committed no sin in absenting herself from the Holy Sacrifice in order to get the rest she felt she needed.

Questions.—Do you think the confessor's verdict was justified? What about her employer?

Solution.—Employers are bound by the laws of justice and of charity in dealing with those whom they employ. As Leo XIII. said, in his encyclical on Labor: "Working people are not the slaves of the employer, and it is shameful and inhuman to treat men like chattels for profit, or to look upon them merely as so much muscle or physical power." It seems to us that on this point the owner of the department store has grievously offended. To make any woman or girl work from 8 A. M. until midnight means to pay no heed to the fact that she is a human being. Sixteen hours of labor would be deemed too much even for a beast of burden, and it is not short of criminal when imposed upon working girls. The civil law itself is gradually recognizing that eight or ten hours a day should be the limit for all who are compelled to labor for their

daily bread. Stock-taking may be necessary for the proper conduct of business, especially in large department stores, but it should be done in a way that aims at safeguarding the health of those who labor. Mere greed for the saving of money cannot outweigh the claims of God and of nature upon those who must earn their bread by the sweat of their brow.

Again the encyclical says: "The employer must never tax his workpeople beyond their strength, nor employ them in work unsuited to their sex or age." It is evident that the demands of nature referred to by the Pope were wantonly ignored, and inexcusably so. No mere business method will warrant so gross a jeopardizing of the health of the employed. Moreover, the encyclical lays stress on the fact that religion is one of the concerns of the working class, and hence, the employer is "bound to see that the worker finds time for the duties of piety." It is clear that the commands of the employer here seriously interfered with God's claim to special worship on Sunday. Hence the employer is at fault.

On the other hand, we cannot decide that Bertha's absence from Mass was justifiable. It may be allowed that she needed a good, long rest. But for this she could have taken nine consecutive hours, and still be present at the late Mass in the parish church. God's service demands sacrifice of us, and the sacrifice here would not have been too great. The last Mass in city churches is usually at eleven o'clock. That allowed ample time for a reasonable amount of rest before going to church, and did not prevent a further indulgence in the afternoon. The fact is that Bertha might, on these three Sundays, have given the remainder of the day to wholesome rest. She could have fulfilled her duty to her God by going to Mass at the cost of no too great sacrifice, and we hold she was bound in conscience to do so. If the last Mass in her vicinity was much

earlier than eleven, we are inclined to think she would have been excused, but we see no reason justifying her absence from the eleven o'clock Mass. Even if Bertha could not rest in the afternoon, we still think that nine hours' sleep, on these exceptional occasions, would truly satisfy the demands of tired nature, at least as far as health is concerned. We think that the confessor erred in his lenient judgment of the case.

XLIX. THE PRIEST'S OBLIGATION OF DAILY MASS

Case.—Leo, the pastor of a suburban church, has during the past year omitted Mass very frequently. His habit is to say Mass on Sundays and Holidays, and not to go near the church during the rest of the week. His excuse is that he is only obliged to offer the Holy Sacrifice on Sundays; his people are not obliged to hear Mass on week days; that the church is distant from the rectory (about 10 minutes' walk); that he needs the rest. It so happens that the thriving town in which he is located has a fairly large Catholic population, and many of the people would be glad to avail themselves of the opportunity of receiving Holy Communion daily. In fact the people criticise the pastor in this matter and desire a change.

Question.—What do you think of Leo's attitude?

Solution.—It is hardly necessary to state that a priest who has charge of souls must see to it that the members of his flock can fulfil their obligation on Sundays and feasts of precept. On this point no fault can be found with Leo. In doing this he likewise satisfies the obligation that springs from his reception of the Sacrament of Holy Orders. By reason of his priesthood every priest is obliged to celebrate Mass several times a year (New Code of Canon Law No. 805). No account is to be taken of an obligation *ex stipendio,* as no mention is made of this in the statement of the case. There are two points that remain for consideration: The first is the existence of synodal or diocesan decrees made by the Bishop for the government of his diocese; the second is the custom in the diocese in conjunction with the needs and wishes of the people. There are dioceses where daily Mass is a matter of synodal

or episcopal legislation. But evidently Leo's diocese is not one in this category. For we can easily presume that he would not openly and wantonly disobey for so long a time in a matter of such extreme importance. Nor would such a breach of ecclesiastical discipline long escape the notice of the head of the diocese, who no doubt would not be slow in correcting such scandalous contumacity. Hence Leo's action can only be judged by the second consideration—the needs of his flock.

Without fear of contradiction we can say that where many of his flock are anxious for daily Mass, then he is obliged to provide it for them. His obligation to care for their souls does not cease automatically at noon on Sunday. Every spiritual benefit that can accrue from Sunday Mass can also come to the faithful on week days through their reverential assistance at week-day Mass. He is obliged to foster the spiritual life in his parishioners; by his attitude he is neglecting this duty: he is depriving them of the immense spiritual advantage not only of the Mass, but of frequent Communion; he is thus doing them an irreparable harm. He is violating the wish of the Holy Father expressed so strongly in his decree on daily Communion. Nor can we fail to point out the fact that he is depriving God of the great honor and glory given to Him whenever the Holy Sacrifice is offered. This alone would be sufficient to condemn his slothfulness. Of the excuses given by him there is not a single one that saves him from just condemnation. Not a single one is worth a moment's pause when weighed against the harm and the scandal that must necessarily spring from an attitude so worldly and so selfish. The people are justified in their criticism. Their desire is legitimate, and they are entitled to demand daily Mass as the means required for the fulfilment of their laudable desire of daily Communion. They should seek a change

of policy or a change of pastor. Now this does not imply that a priest even in such a parish is bound to say Mass every single day of the year. For whenever a sufficient reason operates it will excuse. But such a reason will not be a permanent one (except in case of permanent disability—and then the pastor should supply another priest to take his place). Hence a priest, without sin of any kind, may omit daily Mass from time to time when grave inconvenience, sickness, etc., prevent. Where the reasonable custom exists, or the people—at least many of them—demand daily Mass, then no pastor can permanently omit this daily Mass without sinfully neglecting his duty. We are of the opinion that Leo is guilty of gross neglect of duty and sins grievously against the virtue of charity in refusing daily Mass to those of his flock who are anxious, as faithful Catholics, to have it.

L. ABRUPTIO MISSAE

Case.—Pastor Antonius is saying his second Mass on Christmas Day, when, after the *sumptio hostiae,* he suddenly faints, so that he has to be carried into the sacristy. There his vestments are taken off, he is carried to his room, and a physician is hurriedly summoned. After about half an hour he recovers consciousness, takes some medicine prescribed by the physician, and soon feels very much better. It is the physician's opinion that his collapse was due to a passing weakness of the stomach, and does not indicate anything serious. Meanwhile the assistant, who had already said one Mass, immediately upon the pastor's collapse vested and proceeded to the altar. He consumed the Precious Blood, finished the Mass, and then said his two remaining Masses.

Question.—Quid ad casum?

Solution.—According to the almost universal opinion of theologians, Communion *sub utraque specie,* while not required for the essence of the holy sacrifice, which St. Alphonsus had defined as *sententia probabilior* (*L.* VI. *n.* 305), does belong to the completeness (*integritas*) of the same (according to St. Alphonsus, *L.* III. *n.* 310 *dub.* 2, at least *sententia valde probabilis*). *Ex jure divino* the Mass is a sacrifice which must not only be performed in all its essential details, and by valid consecration of both species, but must also, if possible, be completed by the communion of the celebrant under both forms. This supposes that between an interruption of the Mass and its resumption there exists a moral continuity in time; for where this is lacking the continuation of the Mass, particularly by another priest, is not really a completion of the same

sacrifice, but rather the beginning of another. An interruption of not more than an hour is generally considered to keep intact the continuity, because the unity of the sacrificial object is present, and, if the same celebrant resumes the Mass, there is the added unity of the priest; if more than an hour elapses, then, indeed, this moral unity, especially with another celebrant, is no longer certain, so that a strict obligation no longer exists; nevertheless, even in such case it is permissible to continue the Mass, according to Lehmkuhl (II. n. 338) *etiam post plures horas,* and according to Tamburini (St. Alphonsus *L. VI. n.* 355) *post septem etiam horas.* Since, furthermore, the completion of the Mass is a matter of a *praeceptum divinum* which takes precedence over the *praeceptum ecclesiasticum jejunii,* whoever continues the Mass (be he the same priest or another) need not be fasting; even an irregular, or (secretly) excommunicated, priest would be obliged to continue the Mass, and may, *si deest copia confessarii,* content himself with perfect contrition. The continuation of such a Mass by another priest counts for him, however, as saying a Mass, so that he may not say a second one, as has been distinctly set forth by the decision of the S. R. C. of December 16, 1823 (*n.* 2630). If there were not an actual celebration of Holy Mass, but merely the function of the *missa praesanctificatorum,* on Good Friday, the sudden indisposition on the part of the actual celebrant would make the continuation of the Mass, namely, Holy Communion, possible only when one of the assisting clerics is a priest and still fasting; if one of the two assistants is only a deacon and still fasting, and the other a priest who is not fasting, then the function must be discontinued, the Sacred Host replaced in the repository, to be consumed by the celebrant on Holy Saturday *post sumptionem calicis* (S. C. R. n. 2636).

From these principles follows the solution of this case. First of

all, due time should have been allowed to ascertain whether the pastor would be able to resume his Mass, therefore the assistant erred in proceeding at once to the altar to complete the Mass by the *sumptio calicis;* he should either have left the chalice upon the altar (taking proper precautions) or, better still, should have placed it in the tabernacle or in the sacristy, *in loco decenti supra corporale.* Since the pastor actually recovered within half an hour, and the physician pronounced him out of danger, he could, although no longer fasting, have resumed the Mass, even after an hour's interval, and, performing the *sumptio calicis* and the remaining rites, have brought it to a close. He cannot, however, unless there prevail particular circumstances, read a third Mass, as he is no longer fasting; he was excused from the *lex ecclesiastica jejunii* only for the completion of his second Mass (though there may be special reasons for excusing from the *jejunium* for the third Mass, such as are admitted by some authors).

Since the assistant has actually finished his pastor's Mass, this *integratio missae* counted for him as his second Mass, and he could (even if he has taken no *purificatio* and *ablutio*) only say one additional Mass. This is obviously the sense of the decision quoted above of the S. C. R. of December 16, 1823, which presupposes that the priest celebrates only once a day, for which reason Lehmkuhl holds (II. n. 286): *In festo Nativitatis Domini, recte addit collector decretorum, posse hanc Missam pro una ex tribus permissis computari, ita ut sacerdoti supplenti liceat praeterea duas, non autem tres celebrare* (since in our case the assistant had already said one Mass: *liceat praeterea unam, non autem duas celebrare*).

LI. UNLAWFUL MASS INTENTIONS

Case.—In a certain locality, the two priests, Fr. Philip and Fr. James, observed a totally different attitude in accepting stipends for Mass intentions. Fr. Philip would reject many intentions as not in accord with the rules of the Church, while Fr. James would accept them. The latter held that some of these intentions were lawful, and, in the case of others, he enlightened the stipend givers and induced them to agree to a modification of their intentions. Amongst the intentions rejected by Fr. Philip are the following:

1. For a child who died without Baptism.
2. For a deceased Protestant.
3. For a deceased publicly excommunicated priest.
4. For the recovery of a sick Jewess, and for a good position for a Protestant girl.
5. For a Catholic suicide.

Question.—In how far does the acceptance and performance of these intentions oppose the Church's precepts?

Solution.—Above all it would be well to recommend to these two priests a uniform and harmonious procedure in this matter, for their present practice is calculated to cause, amongst Catholics and non-Catholics, scandal, misinterpretation, and gossip.

1. Regarding the Holy Mass asked for the child that died without Baptism, the principle applies: *"jure divino plane incapaces sunt cujuslibet missae fructus pro se recipiendi ii, qui jam sunt in ultimo termino suo, scilicet* 1. *damnati,* 2. *beati, qui Deum inseparabiliter possident; quod si pro his posterioribus missae sacrificium offertur, id fieri potest ad eorum laudem gratiasque Deo agendas pro bene-*

ficiis beatis illis collatis, 3. infantes sine baptismo defuncti" (Lehmkuhl *Cas. Consc. II. n.* 192-194). Hence it follows: *"Cum igitur impossibile sit pro iis cum effectu missam applicare, graviter peccaret sacerdos, qui id tentaret"* (*l. c.*). "For deceased baptized children the Holy Mass may be offered as a sacrifice of thanksgiving, or, indirectly, to obtain for them that which will bestow accidental glory" (Göpfert *III.* 6 *n.* 83 *p.* 120). If Fr. James made to the stipend-giver the following proposition: "Since Holy Mass can in no wise be of benefit to an unbaptized child that has died, let us offer it as thanksgiving to God for the natural gifts He bestowed upon the child, for it was indeed a great blessing that God created it at all," and if the stipend-giver is satisfied with this intention, and no scandal or misunderstanding is to be feared, there would hardly be anything forbidden by Divine or ecclesiastical law in the acceptance or performance.

2. If the Protestant who died in heresy, was in good faith and therefore saved, he was *jure divino capax* of the fruits of the Mass, but *de jure ecclesiastico* the principle holds: "We have no communion in death with those who in life were not in communion with us" (Innocent III.). For deceased non-Catholics Mass can in no case be said publicly and solemnly, not even in the case of a ruling prince or executive. For this reason, as Göpfert (III. 6 *n.* 84) states, the Apostolic See has repeatedly decreed that Mass foundations for the dead members of a family, some of whom had been Catholic and others Protestant, would be restricted to the Catholic members. A private and quite secret application, known only to the priest and the stipend-giver, is allowed for a deceased heretic only when apparently he was in guiltless error, for if he died *in manifesta haeresi,* then, according to the decision of the Holy Office, April 7, 1875, even this is expressly forbidden. *"In manifesta autem haeresi*

omnes moriuntur, qui in externa et notoria haeresis professione decedunt" (Noldin *III.* 8 *n.* 176, 4). Much less, as Göpfert points out, can it be applied to deceased Jews and heathens.

If Fr. James seeks a modification of this intention, that may be proposed, he will find it in Marc *n.* 1601, 9, 2, who is also supported by others, and who says: "*Quod si sacerdoti stipendium pro aliquo haeretico defuncto in particulari offeratur, respondere poterit, se posse applicare missam* (*de requie*) *pro omnibus fidelibus defunctis cum intentione subveniendi etiam animae illius defuncti, si hoc acceptum sit coram Deo.*"

3. Fr. Philip declined also to say Mass for a deceased publicly excommunicated priest, and quite correctly so, because as *vitandus* this priest had lost "*omnem communionem suffragiorum publicorum et ecclesiasticorum.*" Only in the event that before his death he had given signs of repentance, and at least after death had been loosed from the excommunication, could Holy Mass be offered for him secretly (*occulte*). This applies to deceased *excommunicati vitandi;* regarding those still living St. Alphonsus remarks (*L.* 6. *n.* 308): "*Pro excommunicato vitando tamen licite sacerdos potest offerre missam privatim, quatenus est opus proprium suae privatae personae, non autem nomine ecclesiae vel ut minister Christi.*" Aertnys (1. VI. 115) appears to restrict this to the personal devotion and *memento* of a priest, while Göpfert permits also the acceptance of a stipend, and, therefore, the formal application of the Mass.

4. The fourth case concerns a Mass for a Jewess and for a Protestant, both still living.

a) Regarding all unbaptized persons, St. Alphonsus writes (*L.* VI. 309): "*Probabilius potest offerri missa pro infidelibus: tum quia in lege veteri Judaei soliti fuerunt sacrificare pro gentibus, tum quia*

sic celebrans magis conformatur Christo, qui pro omnibus se obtulit." This agrees with the response of the S. Office (July 12, 1865), which permits acceptance of stipends and intentions from Turks and unbelievers, provided that scandal, superstition, etc., are excluded.

b) For heretics and schismatics the Church allows only the intention for the grace of conversion to the true faith, as the answer of the S. Office of April 19, 1837, sets forth. A Mass may, therefore, be said for the recovery of the Jewess, but not one for the Protestant girl's intention, for the Church is more severe with disobedient children than with those who are strangers to her. It may be regarded as permissible, however, for Catholic friends to have a Mass said for her, as, of course, they have in the first place her conversion to the true faith in view. Compare Lehmkuhl (*Cas. Consc. n. II.* 3. 195 *p.* 111). For living non-Catholic executives of a nation even public and solemn celebration is allowed, as it concerns not merely their person but the welfare of the state.

5. For a Catholic suicide, if Christian burial was not denied him, Mass may be offered publicly if no scandal is to be feared; otherwise, *occulte* (Noldin *III* 3 *n.* 176). The expression *occulte, privatim, etc.*, in opposition to public solemnization, means, according to Göpfert: a merely inner intention without announcing names or using such in the liturgy, also without special oration, etc.

LII. THE QUALITY OF THE MASS AND THE STIPEND

Case.—I was obliged *ex justitia,* by reason of a stipend accepted, to offer Mass for the repose of the soul of Anna, on a certain determined day. Repairing to the sacristy on the said day, I found that, according to the rubrics, the Mass to be said on this day was *de sancto.* After some thought I decided to say the Mass *pro defuncta* in black, as the relatives were present in the church and would not understand my action in saying Mass in the color of the day.

Question.—Did I do right? What should I have done?

Solution.—According to the teachings of theologians, the quality of the Mass, as one of its adjuncts, is to be observed even *ex justitia, dummodo acceptans "stipendium ad ea servanda se obligaverit"* (Noldin, Vol. IV., 184, 2). But this obligation binds only when one has bound oneself to say a certain definite Mass in a special color and when that color is permissible by the rubrics of the day. To break the rubrics on this point is sinful. *"Qui die vetito Missam votivam vel de Requiem celebraret, secluso contemptu et scandalo, peccaret"* (Genicot II., 256, 3). This infraction is held to be venial, because it involves no notable perversion of the rubrics except when done out of contempt or provoking some scandal. Of course, it is seldom that scandal is given.

The priest in question did not do right in setting aside the rubrics and following his own plan. If he had promised to say a Requiem Mass, a Mass in black, and found that he could not keep his promise on the stipulated day he should have called the relatives from whom he accepted the stipend, and have explained to them

that it was impossible for him to fulfil that part of his engagement. Had he explained to them that the fruits of the Mass were independent of the color of the vestments, no doubt they would have been satisfied. What they were actually looking for was the application of the Mass and not the color of the vestments. If it was impossible to notify them, then he should have observed the rubrics and if deemed necessary he could have explained matters later on. If they were determined to have the Mass on that day, then by saying the Mass *de sancto* he would satisfy his obligation; for he was excused by a legitimate impediment from saying the Mass in black. If he had not promised to say a Mass in black vestments, but merely had promised to offer Mass on that specified day for the repose of the soul of Anna, then he would have satisfied all his obligations by saying the Mass of the day for the soul of the departed woman. Noldin (Vol. IV. 184, C.) clearly affirms this point. Our people are well enough instructed not to insist on a *Missa de Requie* when the rubrics do not permit this Mass to be said.

LIII. GREGORIAN ALTAR

Case.—Father Christopher is asked to say thirty Gregorian Masses for a deceased person. Some of these Masses he says himself; but falling ill, he has the remainder said by another priest in a neighboring town. None of these Masses were said at a Gregorian altar.

Questions—1. What is the meaning of the Gregorian altar?

2. What is the Gregorian trentain, or thirty-day Mass?

3. Did Fr. Christopher fulfill his engagement?

Solution—1. It is a privileged altar; that means to say, that any Mass offered on that altar for a certain soul detained in purgatory will obtain the deliverance of that soul, not by reason of justice, but because of the mercy and liberality of God who accepts the vicarious satisfaction. The Congregation of Indulgences gave the following reply on July 28th, 1840, to the above question: *Per indulgentiam altari privilegiato adnexam, si spectetur mens concedentis et usus potestatis clavium, intelligendam esse indulgentiam plenariam, quae animam statim liberet ab omnibus purgatorii poenis; si vero spectetur applicationis effectus, intelligendam esse indulgentiam, cujus mensura divinae misericordiae beneplacito et acceptationi respondet.* The good work or indulgence offered in behalf of the deceased is offered *per modum suffragii,* but it has back of it the intercession of the Church. It is the belief of the Church that God will not turn a deaf ear to the intercession of the Spouse of Christ. The Altar of St. Gregory, which is the Altar used by the holy Pontiff, is in the chapel of the Church of St. Gregory at Rome, on the Caelian hill. The saint during life had a great devotion to the Holy Souls,

and there is a widespread belief that he obtained from God the favor of liberating by his intercession any soul for whom he prayed. After his death the faithful adopted the custom of having Masses said on his altar, piously trusting to his intercession for the efficacy of their prayers. In 1884 the Congregation of Indulgences declared that this was a pious custom and one which met with the approval of the Church. In due time the Holy See constituted the Altar of St. Gregory a privileged one. Since then the Supreme Pontiff has designated other altars throughout the world and has annexed to them the indulgences granted to the Altar of St. Gregory at Rome, at the same time placing them under the special intercessory power of that great saint. These are the *Gregorian ad instar* altars. Hence, Masses said on these altars for a soul in purgatory will be offered with all the intercessory power of the Church and the saint for the immediate deliverance of said soul. It is confidently believed that God in His mercy will grant the petition thus made.

2. The Congregation of Indulgences has likewise approved the *tricenarium Gregorianum* or thirty-day Mass, that is Mass offered for thirty consecutive days but not necessarily on the same altar, or by the same priest, for a definite deceased person. These Masses are not privileged. This is a long-standing custom with the faithful, who, relying upon the practice and the intercession of St. Gregory, hope that the sacrifice offered as a suffragium under these auspices will bring more certain and more abundant fruit to the soul detained in purgatory.

Theologians hold that the continuity of the Gregorian trentain is not interrupted when the thirty successive days include the last three days of Holy Week. *"Non est credible Deum eas non acceptare ut continuas, dum servatur eius sponsae, Ecclesiae tam pia consuetudo."* (Tamburini.)

3. Since Father Christopher had not promised to celebrate at a privileged altar, he fulfilled his obligations by having the Masses offered on thirty consecutive days in the manner indicated. It is not necessary that the Masses be said by the same priest, or at the same altar. They may be celebrated at any altar.

LIV. REDUCTION OF THE NUMBER OF MASSES, OR REDUCTION OF THE STIPEND?

Case.—Father Peter leaves a bequest, for the benefit of a poor mission, of one thousand dollars, with the condition that the priest in charge is to say each year fifty Masses, for each Mass to receive a stipend of one dollar. The money is invested at five per cent. and Father Peter obviously had not thought of a possible lowering of the rate of interest. Nevertheless, after a short while it happens that the money can no longer be invested at five per cent., and four per cent. is the best obtainable. Now, the priest in charge of the mission faces a dilemma: either he must reduce the fifty Masses to forty; or be satisfied with a smaller stipend.

Question.—Is it lawful to reduce the number of Masses in the present case?

Solution.—The priest is not obliged to let the stipend left him by the testator be decreased and consequently it is permitted to reduce correspondingly the number of the Masses. That this decision is correct is proved (1) from the form of the bequest; (2) from the testator's declared intention; (3) from the decisions of weighty authorities.

1. That Father Peter laid stress not upon the number of the Masses but upon the amount of the stipend is readily seen by the wording of the bequest. If he had willed that in any case, and without regard to the yield of interest, the fifty Masses were to be said, it would have been superfluous, even absurd, to fix the amount of the stipend. Hence we may rightly assume that Father Peter, by fixing the stipend, wished to modify his statement about the num-

ber of Masses. 2. As it was the clearly expressed intention of the testator to improve the slender income of the mission, we are justified in case of doubt to decide for an interpretation favorable for that view. It is obvious that our view favoring reduction of the number of Masses is in the sense of that intention, while a reduction of the stipend would be opposed to that intention. 3. In support of our view we may refer to St. Alphonsus. In his *Theologia Moralis* he raises the question: *An possit Capellanus ex se minuere numerum missarum, si deficiant reditus?* And after he has answered the question in the affirmative, for the case that the income entirely disappeared, he continues: *Si vero reditus deficiant in parte, etiam videtur certum cum Escob. n.* 638 *posse Capellanum minuere Missas, casu quo testator congruam eleemosynam designaverit.* Therefore, according to the teaching of St. Alphonsus, when the testator himself fixed the amount of the stipend, the priest may, if the income is reduced, correspondingly reduce the number of Masses.

LV. THE TURNING OVER OF MASS STIPENDS

Case.—A certain priest received a communication from Southern Italy, the writer being a priest asking for Mass stipends. Another priest received from a distant diocese the petition of a confrater for Mass intentions; a recommendation of the bishop came with it.

Question.—Is it permissible to send Mass stipends to such petitioners?

Solution.—Recent legislation of the Church about Mass intentions (see the decrees of the S. C. C. *"Ut debita"* of May 11, 1904, and *"Recenti"* of May 22, 1907) opposes with severity and under threat of punishment any form of barter and gain, the undue accumulation, and the careless turning over of Mass stipends; these abuses are to be uprooted. In regard to the last-named impropriety, the decree *"Recenti"* says: *"Sunt reperti, qui a lege discedentes expressa num.* 5. *Decreti* (*"Ut debita"*) *missas celebrandas commiserint, non modo copiosius quam liceret largiri privatis, sed etiam inconsideratius; quum ignotis sibi presbyteris easdem crediderint, nominis titulive alicuius specie decepti vel aliorum commendationibus permoti, qui nec eos plane nossent nec assumpti oneris gravitatem satis perspectam haberent."*

The Congregation of the Council then addresses itself to the bishops and all other ordinaries and superiors of regulars, exhorting them to exercise in these important matters great vigilance, that they should draw the attention of the clergy to the dangers that arise from disregard of Church precepts, which oblige strictly in conscience, and which are the result of bitter experience. What

are the precepts to be observed regarding the passing on of Mass stipends? When the will of the person requesting the Masses, or the regulations of the Church, require that intentions be passed to another, they may be given either to another priest, or to the Ordinary. For in the former case it is prescribed (see Decree *"Ut debita"* n. 5. 6). 1. that the recipient be known personally, 2. that he is without doubt worthy of confidence and a conscientious priest, and, 3. that he give a verbal or written notice of performance of the Masses to the priest who passes on the intentions. For exact compliance with these precepts the priest who has transmitted the stipend is responsible in conscience and with his means. Thus the transmitting of stipends is very restricted. The law excludes the turning over of intentions to a strange priest, perhaps casually met in travelling, or to any strange priest without proper credentials. If one wishes to send Mass stipends to secular or regular priests outside the diocese, this must be done in the manner prescribed by the Congregation of the Council (Decree *Recenti*): *"per eorum Ordinarium, aut ipso saltem audito atque annuente."* And if bishop or priest wishes to send Mass intentions to a bishop or priest in the Orient, he must do this through the *Congregatio Propagandae Fidei* (n. III) or through the apostolic delegate (answer of the S. C. C. of September 9, 1907). Superiors of Orders and of religious institutions may, according to the same answer of the S. C. C., transmit Mass intentions together with the stipend directly to members of their Order in the Orient.* The

* The words *"ad Antistites aut presbyteros ecclesiarum, quae in Oriente sitae sunt"* in the decree are explained in a letter of the prefect of the Propaganda, Cardinal Gotti, to the Missionary Bishop Alois Benziger, on November 5, 1908. By those words are to be understood the bishops and priests *of Oriental rites,* not, however, the vicars apostolic, prefects and bishops of the Latin rite who have their Sees in the Orient. Since the decree says *"missas, quarum exuberet copia,"* it is not against Church precept if some few Mass intentions are sent directly to an Oriental bishop or priest, provided

priest who hands over intentions to another priest is himself responsible for their performance until he is informed that they have been said; by transmitting them, however, to a bishop or superior of an Order (or to the Holy See, the Congregation of the Propaganda, or the Apostolic Delegate) all responsibility ceases for the priest turning them over (S. C. C., February 27, 1905). For these reasons a priest wishing to send Mass stipends to one outside his own diocese, should do this through the recipient's Ordinary; then the mere notice of receipt suffices (S. C. C., February 27, 1905).

The simplest way for transmitting stipends is to send them to one's own Bishop or the Superior of one's Order. In both cases all obligation and responsibility cease, they being assumed by the Ordinary.

The Ordinary must keep two books; one in which Mass intentions received are noted with the amount of the stipend (*"Ut debita"* n. 7), and a second one in which are entered the priests who have received Mass intentions, and their number (*"Recenti"* II). This is to be done to avoid the undue accumulation of Mass stipends by one priest. The Ordinary must make sure of prompt performance of the Masses. From priests the Ordinary must require assurance of the celebration (*"Ut debita"*), in transmission to another Ordinary this is not required (S. C. C., February, 1910). It suffices if the Ordinary transmits Mass stipends with a general intention (*ad intentionem dantium*), and the priests then celebrate them according to the intentions of the Ordinary. *"Melius tamen*

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the latter be known and quite certainly will read the Masses and give notice thereof. According to an Instruction of the *S. C. de Prop. Fide* of July 15, 1908, it is further permitted to send to an actual Ordinary, (not a titular Bishop or Patriarchal Vicar or Superior of an Oriental Order) Mass stipends for his diocesan priests, but this must be done with the consent of the Apostolic Delegate having jurisdiction.

esse si patefiant sacerdotibus intentiones praescriptae," was the answer of the S. C. C. of February 17, 1905, to a question on this subject. The keeping of the two books, the inscribing and transmitting of intentions, the control and entering of confirmations concerning the celebration of the Masses, will occasion some work that will keep a secretary busy quite some time. Since the Archbishop of Tarragona received permission for five years to let his secretary in charge of intentions keep 3% of the Mass stipends as his remuneration (S. C. C., March 8, 1905), this concession may be granted to other dioceses upon application. That the expenses of transmission fall upon the recipient is evident.

The obligation regarding the time within which the Masses must be said begins with the day on which the intentions are received from the Ordinary (S. C. C. of February 17, 1905). From the precepts of the Church above cited, it is easy to answer the question whether the two priests referred to at the beginning may transmit Mass stipends to their petitioners. The first must not send Mass intentions to a priest wholly unknown to him and outside his diocese. It has happened that Mass stipends came thus into fraudulent hands, and condonation had to be sought in Rome, which was granted. The second is permitted to send intentions to the confrater if from the bishop's recommendation it is plain that the petitioner is a conscientious priest; and if the bishop grants consent for the request of Mass stipends then the bishop assumes responsibility. Nevertheless assurance of the celebration of the Masses should be insisted on.

LVI. DEFECTIVE CONFESSIONS

Case.—A penitent accuses himself in confession that he formerly (*bona fide*) passed over essential things, as for instance the number and species of mortal sins, that is to say he was careless in his confessions, because he knew no better. In another case the confessor discovered defects of this kind through the manner in which a penitent accused himself. He concluded that previous confessions, or at least a part of them, had been similarly defective.

Question.—What is the confessor's duty in such cases?

Solution.—The first mentioned case is dealt with by St. Alphonsus in his Moral Theology, *L*, vi, 504, where he says: *"Dicit I. Tamburini, quod rustici et pueri, qui bona fide confessi sunt, omittendo explicare species et numerum suorum peccatorum, non sunt cogendi ad confessiones repetendas; sed hoc omnino est improbabile, quia licet hujusmodi rustici non teneantur repetere integre confessiones praeteritas, tenentur tamen explicare species et numerum omissum, ut saltem confessionem praesentem integram faciant. Dicit II. Segneri, quodsi rusticus in confessionibus praeteritis dixerit peccata sua modo rudium in confuso, non debet eum confessarius obligare, ut confessiones repetat, quia peccata illa jam fuerunt directe absoluta: sed neque hoc placet; nam quamvis confessiones illae fuerunt validae tamen fuerunt deficientes quoad integritatem materialem quae semper supplenda est."* The holy doctor, in the question of a supplementary completion of the number and species of sins already confessed *bona fide,* takes a stand between those who in such case require a formal general confession, and those who, like Tamburini and Segneri, in this case make no demand upon the

penitent. He requires that what was lacking in previous confessions *quoad numerum et speciem peccatorum* should now be completed; but he does not attack the validity of those confessions. For instance, if someone had *ex inadvertentia,* or otherwise guilelessly, confessed sins of incest, which in committing he knew to be such, as *peccata fornicationis,* then he must now state them specifically because they were not directly remitted.

Berardi in his work: *"De recidivis et occasionariis"* (*Vol.* 1, *pag.* 209) takes a mild view of the duty to correct the number in a subsequent confession. He holds that if one *bona fide* understates merely the number of the mortal sins, he needs not correct his statement, for the confessor has at least *in confuso* apprehended the frequency of the sins confessed, and has absolved directly from the sins as many as there were. He refers to the authority of De Lugo, who writes (*De Poen. S.* 14, *n.* 579): *"Casu quo rusticus propter majorem notitiam quam postea acquisivit, vel puer grandior jam factus melius jam posset explicare numerum, quem sub generalitate et grosso modo dixerat in confessionibus bona fide jam factis, an debeat nunc facere et supplere defectum tunc commissum circa integritatem melius declarandam? . . . Durum videtur imponere hoc onus. . . . Non est obligatio, iterum deferendi ad hoc judicium sacramentale illud peccatum a quo jam directe in eodem judicio per judicem legitimum fuit poenitens absolutus."*

This view regarding the number is certainly correct in those cases where the penitent declared the number only generally and approximately, and the confessor understood the frequency *in confuso* and in general, and gave absolution. It would be different if the penitent had declared a fixed number and later discovered a greater frequency. Here without doubt he would have to declare the larger number.

It is to be further remarked, with Lugo, that if a penitent reveals the state of his conscience to the best of his knowledge and ability, he is not obliged later to repeat individual sins which had been included in general statements, if later the same come to his memory *in concreto,* because they are included in the former accusations. Indeed, such repetition is not even advisable, nor must the confessor permit it, if the penitent is at all of a scrupulous nature. A person of this kind might, by repetition of sins not confessed, become a victim of uneasiness and doubt, all the more as the laity ordinarily cannot distinguish between *actus principales* and *subordinati,* and believe they must confess the latter also in detail, although it is known to be unnecessary if the former, of which they are part, are confessed.

From the above-mentioned we gather the following: If it is a question of former confessions that are not really *invalid,* but only *incomplete,* because of defects that happened *bona fide,* then the confessor has merely to demand that the penitent state the circumstances that must be stated, and that were previously omitted, of his grievous sins; further that he correct according to his present knowledge a fixed number that he stated too low; finally, that he mention those newly discovered sins, that are not part of any species of sins already confessed. But the penitent need not confess sins which he recalls now for the first time *in concreto,* if he has already confessed their *genus* and frequency. He need not repeat them if their number, mentioned *in confuso* to the best of his knowledge, now appears to him as much larger, and still less is he to be obliged to make a general confession to amend this incompleteness, as such obligation exists only when there is a moral certainty that his past confessions were really invalid (Lehmkuhl, *Theol. Mor.,* vol. II., 345), which is here not the case.

2. The case of merely suspected incompleteness of former confessions.—The supplementing of previous *bona fide* confessions is obligatory only when their incompleteness is manifest. The severe view of St. Alphonsus that the material integrity is always to be supplied (*"quae semper supplenda est"*) refers to the case when incompleteness is known without doubt, but not to the case in which it is merely suspected. Here is more applicable another direction of the holy doctor: *"Bona fide confessos non nimis rogandos esse de confessionibus praeteritis, nisi intelligatur, aliquid necessarium defuisse"* (*L. VI.*, n. 471). Therefore, if the confessor has weighty reasons to suspect that the penitent has not properly stated the number and circumstances in previous confessions, he should ascertain whether the penitent is at ease in regard to his previous confessions. If the answer is affirmative he will inquire no further, *nisi intelligat aliquid necessarium defuisse;* for if the confessor would have to put questions to most penitents about former confessions for fear of insufficient accusation, this would be quite a burden for the confessor, and also for the penitent. The latter probably would dislike to be subjected to such examination, especially when they go to confession so seldom that one must be glad to see them in the confessional at all.

This burden would be greater for the confessor; for while the penitent would only bear the burden for his person, the task would be imposed upon the confessor in regard to all who come to confess. There applies here the maxim, "It is not well to insist upon material integrity at any price." The rules of prudence must here guide, according to the other universally accepted principle: *"Cavendum est, ne Sacramentum Poenitentiae fiat nimis onerosum aut exosum."*

We are confirmed in this view by another consideration. Be-

rardi teaches *op. cit. p.* 210 that a habitual sinner who has taken little or no pains to amend during a long life of sin is obviously obliged to repeat his confessions, because they are to be regarded as invalid. Whether there does exist in such a case a positive obligation to make a general confession is somewhat doubtful. There prevails on this point another, milder, view. Noldin says: *"Hi, qui diutius in pravo peccandi habitu vixerunt et, quamvis saepius ad sacramenta accesserint, semper tamen in eadem peccata sine serio emendationis conatu relapsi sunt, ad confessionem generalem instituendam stricte obligari nequeunt, quia certo non constat praeteritas confessiones fuisse invalidas; cum tamen non imprudenter de earum valore dubitari possit, enixe ad confessionem generalem hortandi sunt"* (*Summa Theol. Mor., ed V. P. III. n.* 437). However, if the penitent is in good faith, the confessor should be careful in mentioning an obligation of a more complete confession. First of all he must ascertain whether it be opportune to make the obligation known to him. *"Reapse ut poenitens cogi debeat ad confessionem generalem, non sufficit, ut ipse ad illam teneatur, sed exigitur etiam, ut eadem obligatio prudenter ei possit manifestari."* Frassinetti and Gousset are quoted by Berardi in support of this view.

To conclude, if according to these authorities a general confession, *even though necessary* to revalidate previous confessions, must not under certain circumstances be demanded, so much the less should the administrator of the Sacrament of Penance, merely for the material completeness of the confession, insist on a proceeding which is calculated to make the Sacrament of Penance odious. Should, therefore, the confessor have reason to fear that in previous confessions not everything had been satisfactorily told *quoad numerum et speciem,* he must not question the penitent about his past

life if he must fear that it would be distasteful to the penitent, which is often the case. It were best here, too, to take the golden mean. If the confessor for good reasons considers that he ought not ask his penitent to make a general confession, he may at least cause him to accuse himself *summatim et generaliter* of the sins which he fears are not confessed, and consequently not directly remitted. The confessor will inquire, then, how often the penitent used to confess during the period in which he fears that the confessions have been incomplete or invalid, and will help him to arouse a sincere contrition.

This procedure can certainly not prove irksome or hard for a penitent, and it will serve to put the confessor at ease, in as much as it will help to supply the defects of previous confessions in case a general confession is not to be insisted on.

LVII. SACRILEGIOUS CONFESSIONS

Such confessions happen perhaps much more frequently than many confessors suppose. Missionaries can best tell about this, because they often have to validate unworthy confessions. "If Missions," says St. Alphonsus, "were of no other benefit, than that they make good many sacrilegious confessions, wherein grievous sins have been concealed, especially by females, from motives of false shame, then this would be reason enough to let them be held. Unworthy confessions happen particularly in small communities, either because there are few confessors there, or because one sees them every day, as children see their parents, as friend sees friend, and therefore one is ashamed to reveal certain actions, the result being that the sinner is afraid to confess the faults committed and hence passes his whole life in a sacrilege, many indeed not even breaking this silence of shame upon their death-beds. Now the essential fruits of a Mission consist in making good the many invalid confessions; for sinners well know that the Missioners are strangers, and in a few days will take their departure without ever seeing them again. And thus, moved by their sermons, they hurry to the confessionals in order to purify themselves of all their concealed sins, by a sincere repentance."

However, Missions cannot always be held, while sacrilegious confessions may be committed at any time. Therefore, the priest should not fail to preach often about this kind of confessions. "Father," thus wrote Saint Theresa to a preacher, "preach very often against unworthy confessions; for the devil has no net in which he catches as many souls as in this." A certain priest, upon

reading this, resolved that in every parish in which he would be stationed he would at the first opportunity preach about unworthy confessions, and, after the example of St. Vincent of Paul, urge the people to make general confessions, since in his quite correct opinion it is just these unworthy confesisons that are the greatest obstacle to successful pastoral work. True to his resolution, he preached in every parish, where he worked after that, several sermons on the "dumb devil in the confessional," and it became apparent everywhere, even where it had seemed superfluous, that the great St. Theresa was right. Simply to mention unworthy confessions in a sermon would not help much if it is not made the special theme of the sermon. Of course, the preacher should not be content to give to this important theme just one sermon, he must return to it again and again, so that the remorse of conscience, which with God's grace is awakened in the penitent at the first sermon, be not allowed to vanish, but is made persistent until the soul in this lamentable state discloses to the spiritual physician its burden in the Sacrament of Penance. Saint Leonard of Port Maurice, as experienced a confessor as he was a zealous Missioner, was accustomed to ask at the conclusion of a confession, if he considered it expedient, the simple question: "Did you ever conceal a sin because you were ashamed to tell it? In your childhood, or youth perhaps? Tell me, I beg of you, I will help you!" and he was wont to say that through this question he had saved more souls than he had hairs on his head.

LVIII. LYING IN CONFESSION AND INTEGRA CONFESSIO

Case.—Titus, having read theological writings dealing with the Sacrament of Penance, has adopted the opinion that the time when a sin was committed need not be mentioned in confession, that this circumstance, as also the time of the last confession, may even intentionally be stated falsely without incurring invalidity of the absolution.

Hence he confesses: "I went to confession a week ago. I was distracted in prayer, was impatient, lied once, and include from my previous life twenty sins of fornication." He receives for his penance three Our Fathers. As a matter of fact it is six months since he went to confession, and he has committed the "included" mortal sins since then.

Question.—Is the confession valid?

Solution.—Suarez, Konich, Sanchez, Tamburini, Gury, D'Annibale, Bucceroni, Genicot, Lugo, Noldin, declare the *circumstantia temporis* so unessential that one may dissemble it, if certain *circumstantiae speciem mutantes,* marriage for instance, do not depend upon it. Indeed, some declare the confession valid in spite of a direct lie. I think, nevertheless, that the present case might cause them no little perplexity. Many reasons are here in favor of an absolute inadequacy of such a confession; and it is more than probable that such an outright lie renders the confession invalid, although Ballerini and some other theologians think that such a lie is not grave. Sporer holds the confession in this case to be invalid.

Every confession must be so made that the confessor may be

able to exercise his difficult and responsible office at least *essentialiter*. This office is threefold: Teacher (by exhortation, instruction), Physician (prescribing remedies), Judge (granting, delaying, denying absolution). The imposition of penance belongs, first of all, to the judicial office, but also to the physician's. It is admitted that in the case of sufficiently instructed penitents, who know the necessary remedies and use them, and especially in the case of confessions of devotion, in which there is no *materia necessaria*, no grievous sins, possibly not even venial ones, the first two offices may be left out of consideration; but the office of judge is in every case to be exercised. The penitent, therefore, sins grievously if, being in mortal sin, he renders impossible for the confessor the exercise of the judicial office and of the office of physician when this is strictly essential. This he may do by falsely stating the time.

In the present case, if an *occasio proxima* is not present, and in many cases where no ignorance prevails, the office of teacher is not important. But that of physician is here wholly frustrated. The confessor will not feel obliged to heal wounds that he considers healed long ago!

Innocent XI. condemned the proposition that in confession to a question about the *consuetudo* a penitent need not answer. Why this, when the number of sins since the last confession has been mentioned? Obviously because the penitent must not hinder the confessor from practising his office as physician, if the latter considers it expedient to do so in a special case! This, however, is the fact in our case, since the penitent excludes beforehand a question concerning his spiritual state. If one would concede to the penitent the right (*salva secus integritate confessionis*, in absence of every near occasion, etc.) of stating the time falsely, one with a *prava consuetudo* might reply; "I had this habit formerly." Does

this correspond with the intention of Innocent XI. in rejecting the proposition above mentioned?

Furthermore, the penitent by his false statement frustrates also the proper exercise of the judicial office. Not indeed because the sin committed in his past life is different from those committed recently; but because the confessor in this case did not as judge impose a *pœnitentia congrua,* which is his strict duty (unless important reasons cause him to depart from it), and the penitent guiltily put an obstacle in the way of his fulfilling this duty. To prevent one from doing one's grave duty is manifestly a mortal sin. One cannot raise the objection that the penitent himself might perform a self-imposed severe penance, for, apart from all other consideration, he cannot impose upon himself without the confessor's authority a sacramental penance. Nor may it be said that the penance is not *essentialiter* necessary to the Sacrament; for it is *pars integralis,* and for *materia gravis* is generally imposed *sub gravi* and as *opus grave.* Any deviation in this matter is the confessor's responsibility. For "included" grievous sins the confessor will, of course, not give a severe penance.

Suppose a penitent falls once or twice a month into a sin of impurity, but confesses every time venial sins and includes the sin of impurity as committed three years ago. It is not the failure to mention the *consuetudo,* that renders the confession invalid, for this must be mentioned only when questioned about, but the circumstance that the insincerity of the penitent renders it impossible for the confessor to exercise his office as physician and judge!

Hence we hold that the "including" of grievous sins, really committed shortly before, renders the absolution invalid. It may be asked when and under what conditions the *circumstantia temporis* may be dissembled. We say, whenever the intentional dissimulation

or false statement of time, apart from cases of *mutatio speciei, reservation, consuetudo, occasio proxima,* etc., do not render the confessor's administering of his office as physician and judge impossible, then such dissimulation does not render the absolution invalid. Therefore: (1) If a person confesses as *materia necessaria* a mortal sin, committed from momentary frailty (not *ex consuetudine,* or *propter occasionem,* as *relapsus* in a *recidivus*), but on being questioned states a wrong time (perhaps telling the sin as "previously forgotten" or through forgetfulness insufficiently stated *quoad numerum*), the absolution is *probabilius* valid; for the confessor does not need to exercise his office as physician in the case of an accidental sin of frailty, the repetition of which is not to be feared, and therefore, the frustration may hardly be called sinful; he will, or ought to, exercise his office as judge by imposing the proper penance, as the sin was mentioned as *materia necessaria.* (2) If in a general confession the penitent does not distinguish between recent and past mortal sins, the confession is valid provided there be no habit, occasion, change of species, etc. The confessor is able to exercise his office of physician and judge. Of course the penitent would sin gravely if he answered falsely regarding a still existing habit or occasion.

LIX. GENERAL CONFESSION

Case.—At a recent mission in our church a very zealous missionary, in his talk on Confession, advised the congregation to make a general Confession as a preparation for death, which might be imminent, and as a means of making sure of the mission indulgences. After hearing Confessions for many hours, I, a parish priest, concluded that a general Confession was an unnecessary tax upon priest and penitent. Thereafter I allowed only an ordinary Confession.

Question.—Was I justified in my action?

Solution.—Theologians teach that there are times when a general Confession is necessary; times when it is useful; and again times when it is neither necessary nor useful. When it is necessary by reason of some defect in past Confessions, it becomes the duty of the confessor as the minister of the Sacrament to see that it is made —made integrally and validly. Hence, in such circumstances he must insist on a general Confession. Where there is a well-founded doubt as to the validity of former Confessions, he may advise general Confession, but cannot impose it, as no one is obliged to repeat Confessions, unless he is morally sure of the worthlessness of prior ones. Even in cases where there is not even the shadow of a doubt about the validity of former absolutions, it may be very advisable to recommend a general Confession for various reasons. The ultimate object of such advice would of course be the betterment of the penitent's spiritual condition. In these days when men are taken up more and more with the things of the world, to the detriment of the things of the soul, when the service of mammon has been substituted for the service of God, it is clearly the duty of the

followers of Christ to protect themselves from the dangers surrounding them by leading a more spiritual life. This can be accomplished by means of Confession, even by making from time to time general Confessions. Reviews (general in a sense) have ever been used by religious communities as a means of attaining greater perfection. Such Confessions beget greater humility, greater contrition, greater purity of heart, and hence a greater desire for the more perfect service of God. Particularly is this the case when they are preceded by meditations on sin, death, eternity, etc., as happens in time of retreat or of missions, jubilees, etc. This is spoken of by Benedict XIV. in his Apostolic Constitution of 1749. "Ita universa vitae ratio animo observatur; ex quo hominis timor ac humilitas, major in peccatum horror insurgit: augentur vires, ut quidquid ad malum provocat, propulsetur; jucundissima pax et tranquillitas animo accedit; et quae praeteritis confessionibus illata sunt damna sarciuntur." It is evident the Supreme Pontiff was strongly in favor of general Confession at such times as those of mission and jubilee, as this constitution was issued in preparation for the jubilee of 1750.

It follows that it is a good plan to advise general Confessions at such seasons of grace as a means to an end. Where general Confessions are neither necessary nor useful, they are not to be permitted. This is the case when penitents wish to make a general Confession for some outside motive; from vanity or pseudo-humility, or because the confessor is new to them and they foolishly think that such a Confession is necessary that their true spiritual condition may be known to him; or more frequently where the penitent is given to scrupulosity; in such instances this kind of Confession only begets greater difficulties. From what has been said above, the solution of the case is obvious. The missionary

was giving evidence of his zeal for souls and of his wholesome practical judgment. He did well in preaching general Confession during the mission; his advice would be more practical if he encouraged a general Confession not of the whole life, but of the sins committed since the last general Confession. This simplifies matters by removing occasion of confusion, worry, doubt, anxiety, etc., the natural concomitants of all drastic search into one's past life, thus leading to more certain and more beneficial results. With this modification, the holy man's action is extremely commendable. The parish priest did not look at the facts from the proper angle. His judgment was obscured by the personal element he introduced. His consideration for the penitent was fraught with spiritual disadvantages to the penitent, and led him into a violation of the virtue, if not of justice, at least of charity.

LX. FEIGNING SCRUPULOUSNESS IN CONFESSION

Case.—At a mission a female penitent confesses to one of the missionaries, and *ad sextum* she mentions that she includes everything, but that her regular confessor had forbidden her to go into details for the reason that he was convinced that her offences were only imaginary and due to scrupulousness. However, having listened to a sermon on invalid confessions, she had become troubled about the matter and feared that not everything was as it should be. Hence, she thought, she had better ask the advice of the missionary. In answer to some questions she admits that she had reason to think that she had simulated scrupulousness, partly because ashamed to state the facts, and partly "to get off easy," as she puts it. The missionary decides that she must now tell him the full facts so that the past might be done with for good.

Question.—Is the decision correct?

Solution.—The decision is correct because it is connected with a mission, therefore with a general renovation. Also because, as a matter of fact, it happens that some penitents, especially women, simulate scrupulousness, and persist in it for a long time, to obtain leniency. While such a penitent makes confession, the confessor should be most kind, because such penitents need often a great deal of persuasion to come out with the full truth. However, when the penitent is through with the confession, the confessor may deem himself justified and in duty bound to talk very seriously and even severely to such a penitent.

LXI. ABSTINENCE FROM HOLY COMMUNION GIVEN AS A PENANCE

Case.—Emerentianus, a saintly confessor, has many penitents, some of whom he is preparing to enter the ecclesiastical state. In the course of his preparation, he has laid down certain rules for their daily government; that is, he has marked out certain rules, a sort of novitiate, to be followed by these special penitents. When he finds they have not lived up to these rules, he orders them to abstain from Holy Communion on specific days, either as a stimulus, or as penance. He even follows this plan in dealing with some of his other penitents, who are to remain in the world.

Question.—Is such a plan advisable?

Solution.—Holiness, no doubt, is very desirable in the life of a confessor; but it is not the only requisite. God, whose place the confessor takes, expects his representative to have the necessary knowledge for his work, and a certain amount of practical prudence. Now it is evident from the decree of Pius X. (Dec. 20th, 1905), that confessors should urge their penitents to receive Holy Communion frequently, even daily. The confessor is obliged to be familiar with this decree, and to desire to execute it. According to this decree, only two things are required for daily Communion, freedom from mortal sin, and a right intention. The law reads: "Caveant tamen confessarii ne a frequenti seu quotidiana communione quemquem avertant, qui in statu gratiae reperiatur et recta mente accedat." Freedom from mortal sin and a desire to please God, coupled with a wish to run to the Divine Physician with our infirmities and defects, entitle a penitent to receive the Holy

Eucharist daily. It is evident that the penitents in question are of this class and fulfil all the conditions demanded by the late Holy Father. Therefore they should be permitted to receive the Body and Blood of their Lord as often as they desire. It seems to us that the method of action pursued by the confessor in question is very unwise, and imprudent, and at the same time very unjust. His penitents are endeavoring to come closer to God, as is evident from their acceptance of the rule of life, and the confessor should therefore encourage them to the use of every means at his disposal that will help them to realize their desire. Now theology, reason, and common sense tell us that daily Communion is the most sure means of obtaining strength for all who are bent upon the acquisition of purity of life, and who are determined to advance in holiness. The confessor's ruling deprives these penitents of this powerful, God-given means to a successful issue with the infirmities and temptations of weak human nature, and is consequently detrimental to the very end he has in view. It should, therefore, not be countenanced. It is true that the Holy Father declares that the confessor should be consulted, on so important a spiritual matter; but in doing so, he lays down the laws that are to govern the confessor in forming his judgment. In the present case, we must notice that there is no question of sin, either mortal or venial, but of the breaking of regulations merely arbitrary in their nature. Now, no such regulations fall under the laws specified by the Supreme Pontiff. It is evident, likewise, that the infraction of these arbitrary rules does not show a lack of the necessary intention. It is clear that the injunctions of the Vicar of Christ are by no means lived up to in the case before us. Emerentianus should find some less damaging and more fruitful plan to accomplish his excellent and holy object. Let us add here that abstinence from

Holy Communion not being a salutary penance, should not be made a Sacramental penance. It is subversive of the very object of Sacramental penance, and is therefore unjustifiable. Penance by its nature is intended to do good: this one does harm. It is intended to heal: this one removes the most salutary of all remedies. Emerentianus is pursuing a wrong course, one that is in no way to be praised.

LXII. LACK OF ABSOLUTION

Case.—Father Julius while hearing confessions is about to give Edward absolution when he suddenly decides to interrogate this penitent. This consumes some time, as it involves long explanations on the part of Edward. Satisfied at length Father Julius, after a few words of exhortation, pulls the slide, and goes on with hearing the next penitent. After the lapse of a quarter of an hour the priest becomes conscious of the fact that Edward had not been absolved. The next morning while distributing Holy Communion he sees this same man at the communion rail. He is perplexed. What is he to do? He concludes he cannot deprive the man of the Sacrament without causing wonder, even scandal, and so he determines to give him the Sacred Host and let the matter rest there.

Question.—Was Fr. Julius right in giving Communion to Edward?

Solution.—The defect here recited we class as a culpable one, affecting the validity of the Sacrament. The general theological doctrine is that such a defect must be repaired by the confessor, even at great inconvenience to himself or to the penitent, provided the latter is exposed to grave evil arising from the culpable action of the confessor. The reason for this is the obligation in justice, which the priest contracts when he assumes the rôle of confessor. But if no grave spiritual damage is to be feared, then the confessor may leave his penitent in good faith. If the confession involved only venial sins, the confessor need not be disturbed, as these sins can be, and are, removed in many other ways, as for example by the Sacrament of the Holy Eucharist. If Edward had accused himself of mortal sin, the priest, if possible, should call him to his presence and explain the situation to him. He should

then urge him to a renewed act of contrition and, on the presumption that no new mortal sin had been committed, should absolve him. But, beyond doubt, in nearly every instance such procedure would be very embarrassing to both, penitent and priest. If this be so, or if the penitent cannot be easily recalled, conditional absolution may be given him, provided he is theologically present. The fact that Edward was already at the altar rail, waiting to receive Holy Communion, makes it impossible for the priest to acquaint him with the defect of absolution. He is not justified under the existing conditions in sending him away from the altar, hence he must leave him in good faith and give him Holy Communion. Julius should not be disturbed about the difficulty, as the sins of Edward, even the mortal sins, can be forgiven by his reception of the Holy Eucharist, and by absolution in his next Confession. However, we are of the opinion that Julius should have given conditional absolution to his penitent at the altar rail before the administration of the grace-giving Sacrament of the Body of the Lord.

LXIII. EXPIRED JURISDICTION

Case.—Linus, a priest, has had jurisdiction in his diocese for the past two years. His faculties have now expired. Two or three days before their termination he wrote to the Bishop acquainting him with the facts and asking a further extension of two years. He has heard nothing from the Bishop since, although he has no doubt that his request will be favorably received. This morning, after Mass, he was requested by some of his regular penitents to hear their Confession. At first he was inclined to refuse, but then, considering that the penitents would not understand any technical explanation he could give, also reasoning that the renewed faculties must be on the way to him, he decided to hear the Confessions as requested. Thinking the matter over afterwards, he concludes that the Church supplies the jurisdiction in case of common error and he is satisfied that his action was correct.

Question.—How would you solve the case?

Solution.—In the first place, Linus has no right to act on the presumption that the Bishop will renew his faculties; for while we may use *tacit* jurisdiction, it is not lawful to use *presumptive* jurisdiction. Then, the argument that the penitents would not understand has no force in Canon Law. Such ignorance of penitents can never be considered as a title for assumption of jurisdiction. Penitents might be amazed that their regular confessor should refuse to hear their Confessions at the particular time, yet they would be apt to assign many a saving reason for his refusal. Thirdly, the confessor who hears in such an instance Confessions with the excuse that his faculties must then be on the way to him,

must be in the post office, etc., reasons in a way that is not sanctioned by the law. Delegated jurisdiction has its effect only from the moment it is *authentically* received and accepted (cf. Genicot, Vol. II, No. 327-5; Lehmkuhl, Vol. II, No. 380) even though there be no doubt that it will be most certainly granted (cf. Genicot, Vol. II, No. 331). It may in fact be on the way, the messenger may be at the door with the documents, the servant may be bringing them to the priest; but as long as the confessor has not authentically received them by his own person, then it must be said that he has no knowledge of the fact that the Bishop has actually granted him the required faculties, and hence he cannot use what he has not. His subsequent reasoning that the Church *supplied* jurisdiction was correct only *probabiliter*. It is *not certain* that the Church supplies when there is lack of jurisdiction without a *titulus coloratus*. It is merely probable that she does by reason of the *common error*, hence for the common good. This is the case before us, for the jurisdiction of Linus having expired he has no title to jurisdiction. But even though the Church actually supplied, that does not make the action of Linus licit outside of a case of necessity, which does not exist under the circumstances given above. We must conclude that Linus's action in hearing Confessions and absolving was gravely illicit. He lacks theological sense.

LXIV. ABSOLUTION FROM RESERVED CASES

Case.—George is preaching a mission in the diocese of X. Whilst hearing confessions he meets with the following cases, which he learns are reserved in the diocese mentioned.

1. Sharah, a converted Jewess, confesses that she, after her conversion in 1911, contracted marriage with Isaac before a Lutheran Minister. She has now four children. Isaac, she says, is willing to have the marriage validated. George absolves her and tells her to consult the Pastor about the marriage. The Pastor refuses to marry her until the case has been referred to the Bishop.

2. Damian, a prominent Holy Name member, confesses that he caused great scandal by recently getting married before a civil magistrate, which is a reserved case in the diocese of X. George, with an admonition to repair the scandal, absolves him, and bids him have his marriage revalidated.

After four weeks of strenuous labor on the mission, George returns to the quiet of parochial life. Whilst hearing confessions in the diocese of Z, where he is assigned, he has the following cases:

3. On the eve of the Ascension, Bertha comes to Confession accusing herself of sending, without reason, her children to the public school, which case is reserved to the Bishop of Z. As Bertha has not been to Confession in two years, George at once absolves her.

4. Leaving the church he is summoned to the parlor to hear the confession of a priest. It is Joseph, a religious, who accuses himself of having violated the vow of poverty, the absolution of which he says his superior reserved to himself.

Questions—1. What changes of legislation with regard to reserved cases have been affected by the decree of the Holy Office of

the 13th of July, 1916? What are the cases mentioned in the decree in which the confessor may absolve from sins reserved to the Bishop?

2. Does the above decree affect those cases reserved to the Ordinary in the *Bull Apostolicae Sedis?*

3. Does the above decree affect the cases reserved to Bishops by the Third Plenary Council of Baltimore?

4. Does the decree of the Sacred Congregation "De Religiosis," Aug. 5th, 1913, affect the cases reserved by religious superiors?

5. Did George rightly absolve in the cases proposed to him? If so, on what grounds?

Solution.—Ad 1m. According to the decree of the Holy Office, July 13, 1916, episcopal reservation ceases in the following cases:

(a) Reservation ceases *ipso jure* with regard to the sick not able to leave the house, wishing to go to Confession; with regard to those confessing, about to contract matrimony; as often as, in the prudent judgment of the confessor, the faculty of absolving cannot be asked without a grave inconvenience to the penitent, or without danger of violation of the sacramental seal.

(b) Reservation also ceases if, in a certain particular case, the faculty of absolving has been asked and was refused. It ceases, however, for that case only.

(c) During the entire time set aside for the fulfillment of the Easter duty parish priests and those *in jure* considered such, may absolve from all reserved episcopal cases.

(d) Missionaries during the time of the mission have the same powers.

(e) Lastly, penitents incurring a reservation in one diocese, may be absolved by any approved confessor in another diocese where

such reservation does not exist, even though they go there precisely for obtaining Absolution.

Ad 2m. The above decree does not affect the cases reserved to the Bishops in the Bull *Apostolicae Sedis,* as these are of Papal legislation.

Ad 3m. With regard to the cases reserved by the Plenary Council of Baltimore, there is at present a diversity of opinion whether they are affected by the present decree. There is grave authority for maintaing that they are not affected, as the scope of the late decree seems to be to limit the power of individual Bishops. There is, however, also a very grave authority that the decree extends to all episcopal cases. No official interpretation of this point has as yet been given.

Ad 4m. The power of reservation of religious superiors has been practically taken away by the decree of 1913, according to which any confessor approved by the Ordinary can absolve validly and licitly every religious, even in cases reserved with censure.

Ad 5m. (1) As it is doubtful, *dubio speculativo,* whether George had the jurisdiction to absolve Sarah in virtue of the above decree, the Church will supply the jurisdiction.

(2) George undoubtedly had jurisdiction to absolve Damian in virtue of the late decree.

(3) If George was formally or equivalently a parish priest and if the confession of Bertha took place during the time for fulfilling the Easter duty, the episcopal reservation ceased.

(4) George validly and licitly absolved Joseph in virtue of the decree of 1913.

LXV. ABSOLUTION OF PEREGRINI

Case.—Cosmos, a priest of the diocese of X, passing through the adjoining diocese A, is asked by Listrus, a layman of the diocese of D, to hear his confession. At first the request is refused. Upon second thought the priest consents, for he recalls that theologians agree that confessors can validly absolve all strangers. Since he is in good standing in his own diocese, he sees no reason why he should not validly absolve. So he hears the confession and imparts absolution.

Question.—Is this absolution really valid; if so, from whom does the priest receive his faculties?

Solution.—St. Alphonsus taught that *peregrini* could be validly absolved by virtue of faculties received *ex voluntate ecclesiae,* and therefore by virtue of jurisdiction received immediately from the Pope, or, mediately, through the bishop whose subject the penitent is. But theologians to-day have adopted the opinion of Ballerini (*Op. Theol. Moral, Vol. v,* 1), which may be stated as follows: (1) In order to absolve a *peregrinus* faculties must be granted by one who has ordinary jurisdiction over the penitent; (2) the existence of the custom of absolving *peregrini* outside their diocese neither conveys nor can convey the necessary jurisdiction; (3) jurisdiction is given by consent (express or tacit) or leave (implicit or explicit) of the Ordinary or of the particular pastor of the *peregrinus;* (4) this consent includes the imparting of jurisdiction to the confessor chosen by the *peregrinus;* (5) a sufficient indication of the consent exists in the tolerance of the custom with the knowledge of the bishop and without any reclamation on his part; (6) the jurisdiction dependent upon this consent may be withdrawn, thus destroying the

custom and invalidating any absolution imparted to his subjects. So much for the source of jurisdiction over *peregrini.* Can we hold, then, that Cosmos received the necessary faculties for the absolution of Listrus from the bishop of D? No, we cannot. For though the custom does exist of granting indirect jurisdiction to those priests who are chosen by *peregrini* as their confessors, yet in accordance with the principles of Canon Law, only such priests can exercise jurisdiction who have received the necessary *approbation* from the bishop of the place where the confessions are heard. To impart absolution without this approbation is sinful, and of course renders null and void the absolution granted. The bishop of D can not grant this essential requirement to Cosmos, for he is not the proper subject of the bishop of D. The bishop of X has already approved Cosmos, but this approbation is limited and is of no value within the territorial jurisdiction of the Ordinary of A. The bishop of A has given no approbation to this foreign priest, hence Cosmos has no approbation for the hearing of confessions within the diocese of A. It is evident he does wrong in hearing the confession of Listrus, and the absolution he imparted was absolutely invalid. Bishops do not intend to give jurisdiction to those who cannot legitimately exercise it. Wherefore it is not their wish to bestow it on those who do not possess the necessary approbation. Hence we can hold that the kind-hearted Cosmos did not even have the all essential jurisdiction, and, as a consequence, could not validly absolve.

LXVI. ABSOLUTION OF NUNS

Case.—Father Narcissus, an approved confessor, while visiting a hospital conducted by nuns is asked to hear the confession of one of the sisters, who is seriously though not mortally sick. This he agrees to do, arguing with himself that since the latest decree regarding the confessions of nuns places the latter on the same level as the ordinary faithful, and since he possesses diocesan faculties, he may hear the confessions of nuns even within the convent.

Question.—How is the decree *Cum de Sacramentalibus* of Feb. 3, 1913, to be interpreted?

Solution.—In addition to the decree of Feb., 1913, treating of the confessions of nuns, Pius X. issued a further decree, on August 5th, 1913, which grants to approved confessors over the whole world the faculty of giving absolution to members of religious Orders, Congregations or Institutes, without being obliged to inquire whether permission was previously obtained by said religious or not. The faculty thus granted includes the power to absolve validly and licitly even from sins which are reserved *sub censura* in the Order or Institute. This faculty is an extension of the one which had been given earlier to priests residing in the Holy City. Nothing is said herein about hearing confessions *within* religious houses. The point touched upon is that the confessor is not obliged to ask whether the religious has obtained permission or not. This implies that the confession is heard outside of the convent. If the priest was hearing confessions inside the religious house we would have an indication that the superior had given permission for the procedure. Now, if we turn to the general decree of February

1913, we read in the first paragraph that *only one ordinary* confessor shall be assigned to each house, unless necessity demands the appointment of two or more. In the fourth paragraph it is said that the "Ordinary will assign *several priests* whom the religious in *particular* cases can easily send for to hear their confessions." Now, are these to be reckoned as ordinary confessors? Evidently not, since in the first paragraph we read that each house is to have *only one* ordinary confessor. The *several* are not to be held as extraordinary, for the words "particular cases" rule out such an interpretation. Extraordinaries are for general, not for particular cases. Hence they must belong to the third class provided for in this decree, viz., to the *special* confessors. The decree provides for the calling of a special confessor at the request of a nun, "for the peace of her soul, or for her greater progress in spiritual perfection." Does this refer to *any* confessor who has the jurisdiction and approbation necessary to hear confession in the diocese, or does it refer to the several mentioned above? Upon this point there is some doubt. Some think it refers to *any* priest having jurisdiction and approbation; others think it excludes all but the *several* assigned by the bishop for that purpose. To us it seems that it refers only to the *several* actually designated by the Ordinary. If not, then what is the reason for the appointment of the *several,* since they are neither ordinary nor extraordinary? In the fifteenth paragraph it is laid down that a sick sister "may call *any* priest approved for hearing confessions." Here it distinctly says *any* priest. In the preceding part the term *any* is not used, but there seems to be a connection between the *several* who are for particular cases and the special who are to be called at the request of the individual nun. We are inclined, then, to believe that *any* priest having jurisdiction and approbation in a diocese for the confessions of the faithful may not

validly or licitly hear confessions within the walls of a religious house except in case of sickness. While nuns when absent from their convent may confess to any priest who can hear the confessions of the faithful, the statement that they are by recent legislation put on a level with the faithful as regards the convent itself, cannot be admitted until Rome definitely pronounces upon this point.

LXVII. QUESTIONING A PENITENT IN THE CONFESSIONAL

Case.—John, on one of his frequent visits to a public inn, drinks to excess, becomes intoxicated and falls asleep there. When he awakens he is sober again, proceeds to use indecent and impure language, and engages in a vicious quarrel with another man. Several days after he goes to confession, but does not mention anything of all this. The confessor, who has been informed by the innkeeper of John's improper behavior, is surprised that John does not accuse himself of the things that he did at the inn, and begins to question him, in a general way, about intemperance, impure language, etc., but John replies to all these questions that he is not guilty in this respect.

Question.—It is asked whether the confessor is privileged, or obliged, to remind John of the happenings at the inn, and what he will have to do if John denies them.

Solution.—This is a case, first, of the obligation of a confessor to question his penitent, and, secondly, of his privilege or obligation to question the penitent about a sin omitted or denied by the penitent, when, to the certain knowledge of the confessor, he has committed it. The obligation on the part of the confessor, to question the penitent, prevails whenever the confessor doubts, either on account of the confession, or on account of his private knowledge, that the penitent makes a complete confession, and this obligation to question extends to everything, but no more, that the confessor must know to exercise his office. In this case the confessor knows from private information that his penitent has committed mortal sins which he omits in his confession, namely, complete intoxication,

impure talk, and vicious quarreling, all of which are objectively mortal sins, though among people of low station they are often not considered of grave nature. The confessor is, therefore, privileged and obliged to inquire about these sins, not only in a general way, but positively and directly. Such a question can always be asked of a man of the station and habits of John, even if the confession itself does not offer a reason for the question. Such information cannot be regarded to have been made *sub secreto,* hence he may, and must, state that he was informed of these happenings by one of those present at the inn, unless of course harmful consequences are to be feared.

What, however, is the confessor to do if the penitent denies these sins? Evidently the confessor cannot absolve the penitent if he is absolutely convinced that the penitent denies the matter in a sacrilegious way, if he is positive that his information was absolutely reliable, and, on the other hand, that the penitent knowingly and maliciously denies his guilt. Such absolute conviction, however, can hardly ever be secured through the statement of a third person. This is based by authorities of Moral Theologies on the fact that the informant may have been mistaken; furthermore, the penitent may be an invincibly ignorant person, and may even have a valid reason to be silent, since perhaps he has already confessed these sins. In this case, for instance, the innkeeper in relating the incident may have exaggerated, etc. It is possible that the patient does not know of his complete intoxication, he may think that he just fell asleep, and as far as the impure talk and the quarrel is concerned, these things may mean so little to him that he forgot all about them. The principle governing here will therefore be: *Poenitenti credendum est tam pro se quam contra se dicenti.* This penitent will have to be absolved.

LXVIII. THE SEAL OF CONFESSION AND ABSOLUTION

Case.—Francis and Anna, about to be married, made their confessions on the morning of their wedding-day. Among other things the bride accuses herself of a grievous sin *contra sextum,* committed the previous day with the bridegroom. Right after the bride, Francis comes to confess, but makes not the least mention of the sin committed with Anna. The confessor, therefore, asked general questions in reference to the Sixth Commandment, but failed to elicit the least acknowledgment from Francis. Since he must presume that the groom confesses sacrilegiously he does not absolve him, but with a prayer gives him the blessing which the groom supposes to be the absolution.

Question.—What is to be said of the confessor's action?

Solution.—This is a case by no means rare in practice. Concerning its solution, however, the opinions even of the greatest moralists differ. St. Thomas (*opusc.* 7 *al.* 12. *qu.* 6.) propounds the general principle: *"In confessione est credendum peccatori confitenti et pro se et contra se; sed contra alium nullo modo est ei credendum: alioquin daretur multis occasio fictae confessionis et fraudulentae infamationis."* According to this the confessor is in general to form his judgment about the penitent according to the accusation of the penitent himself (*confitenti et pro se et contra se*), not according to the statement of another, who possibly with deceiving or calumnious intention (*ficta confessio et fraudulenta infamatio*), mentions in his accusation the sins of another. The certainty that the confessor gains from the deposition of the penitent, is as a usual thing certainly greater than that which he obtains through the confession

of another, as St. Thomas expressly sets forth (4. *dist.* 17 *Qu.* 3. *art.* 3 *q.* 5. *ad.* 2.) : *"Quantum ad hanc cognitionem (sc. per confessionis manifestationem) non potest (sacerdos) maiorem certitudinem accipere quam ut subdito credat, quia hoc est ad subveniendum conscientiae ipsius; unde in foro confessionis creditur homini et pro se et contra se."* Suarez is of the same opinion (*de poenit. d.* 32. *s.* 3. *n.* 9.) : *"Quantumcumque confessor sciat peccatum poenitentis ex aliarum relatione, tentetur in hoc iudicio magis credere ipsi poenitenti propter rationem factam."*

Therefore, if the penitent is silent about a sin of which the confessor has learned from another, then the confessor ought to assume that the penitent either has forgotten the sin, or has already confessed it to someone else, or has a lawful reason for keeping silent, or that after all the other person had erred. The confessor may refuse credence only when he has indubitable evidence of the sin which the penitent does not reveal, when, for instance, he has seen it with his own eyes; in this case says Suarez (*l. c.*), *"non tenetur ita stare dictis poenitentis ut non possit uti scientia sua ad convincendum et redarguendum ipsum poenitentem."*

These principles apply in the case that the confessor *extra confessionem* has learned of the penitent's sin, as also in the case that he knows it *ex confessione alterius,* as St. Thomas plainly indicates in his first quoted sentence (*opusc. 7. al.* 12. *qu.* 6.).

But the circumstances may be, as in the present case, of such kind that the confessor knows from the confession of another the sins of a penitent with evident certainty, because it could not possibly be supposed that the first penitent would calumniate the second, nor that she erred, because she had taken part in the sin. Now the question is, can the confessor make use of this knowledge, gained from the confession of another, as the rule for his conduct towards

the penitent? We do not mean a use producing an obvious violation of the seal of confession, i. e., by direct reference to the accusation of another, or through pointed questions, from which the penitent may easily become suspicious that another revealed his sin. It is to be considered, however, whether it would not be allowable in order to prevent an invalid absolution on part of the confessor, to leave the penitent in good faith about receiving absolution, and either not to absolve him at all, saying a prayer instead of the absolution, or to absolve him *sub conditione*. On the one hand the confessor is confronted by the duty not to violate the *sigillum*, and to consider the knowledge gained as not available for his procedure, on the other hand it seems that the avoidance of a *cooperatio ad confessionem sacrilegam* is reason sufficient *sine ullo gravamine poenitentis* not to grant absolution or to grant it *sub conditione*. This is still a mooted question. St. Alphonsus enumerates the opinions of various authors and sides with Lacroix in these words: *"Melius meo iudicio sentit Lacroix, quod eo casu nullo modo absolvat, sed tantum aliquid oret ad occultandam negationem absolutionis."* Amongst the modern Moralists this view is also held by E. Müller, who however counsels conditional absolution when it is not certain that the penitent's confession is sacrilegious. Göpfert holds in principle that the penitent in this case is not to be absolved: "When the confessor knows the sin only from the confession of another, particularly of the participant in the sin, then without the other's special permission he ought not to inquire in particular about this sin, but should put only general questions that do not endanger a revelation of the other's confession. If it is quite evident that the penitent has sacrilegiously concealed the sin, he ought not to be absolved, but should receive the blessing, without telling him about it." When, however, such plain evidence is not practically obtaina-

ble, as is generally the case, absolution is to be given: "And since this evidence cannot be established through the confession of another exclusively, the penitent is as a rule to be absolved, absolutely, if there is no reason to doubt his sincerity, otherwise conditionally." Noldin (*De Sacram. n.* 402) leaves the question open: *"Quodsi rem non fateatur et plane constet poenitentem tacere peccatum commissum, licet absolutionem omittere et ad occultandam eius omissionem aliquas preces recitare; sed licet etiam poenitentem sive absolute sive conditionate absolvere."* Gury takes a somewhat different attitude in solving a similar case. The penitent not only might, but must—*saltem probabilius*—be absolved. The following reasons are presented: "1. *Confessarius nequit uti notitia confessionis ad negandum sacramentum alicui poenitenti.* 2. *Etiam admissa saltem probabilitate alterius sententiae, non licet uti opinione probabili in materia sigilli sacramentalis."* Gury allows only a conditional absolution, for reasons of respect for the Sacrament; and, on the other hand, on account of the seal of confession and the penitent's possible good faith, he does not permit a denial of absolution. Bucceroni, giving as his authority St. Thomas, as above quoted, is in favor of giving absolution as a general rule.

As in this important question the authors take no very decided position, it is to be recommended to absolve the penitent *sub conditione,* for while, on the one hand, there is good reason to doubt his sincerity, there is, on the other hand, the general principle: *credendum poenitenti pro se et contra se.* There is no violation of the seal of confession, because there is no *revelatio peccati* and no *gravamen poenitentis.* There is, however, also sufficient probability in the opposing opinion that one may refuse absolution, unknown to the penitent, the penitent being dismissed with the confessor's blessing; a *mala fides* would at any rate make the absolution invalid.

LXIX. A HASTY DECISION

Case.—Paul admits in his confession that he has defrauded Serafino, in a business transaction, of the sum of five hundred dollars. He intended to make the proper restitution, but has learned that Serafino was lost in the Titanic disaster. He asks the confessor what to do about the money. Without reflecting, the priest *advises* him to give the money to charitable works. Upon his promise to do so, Paul receives absolution and goes his way.

Question.—Was the decision of the priest wrong, and is he, therefore, himself bound to restitution?

Solution.—In the first place, we must note that the confessor gave no postive decision. He merely advised the penitent. Had he commanded, or obliged, Paul to give the money to the poor, his action would have to be judged in the light of stern theological principles. It is clear that the decision was given hastily and without due reflection. A little thought given to the facts would have resulted in an advice, or even a command, quite at variance with the suggestion made to the penitent. Without any doubt the money does not belong to the poor, but to the heirs of Serafino. Hence it is Paul's duty to do his best to find the heirs, and to restore to them his ill-gotten goods. It may be claimed that he has made restitution, since upon the advice of the confessor he has deprived himself of the stated amount for the benefit of the poor. But such erroneous advice, even when followed to the detriment of the one who seeks it, does not satisfy the obligation existing by reason of the original fraudulent action. As a result, Paul remains indebted to the heirs of Serafino, provided he can find them. His putative restitution was his misfortune: but he can console himself by the

thought of the good he has done and the Lord may graciously take his loss as an act of atonement. In the event of his refusal to restore a second time, is the confessor obliged to do so for him? The priest when he realized his mistake should have sought out the penitent, and with *his permission* spoken of the matter and corrected his mal-advice. If he could have done so without grave inconvenience, and yet did not do so, then he is bound to make restitution in case Paul refuses. This is not because of the wrong decision, but because of the neglect to prevent the grave detriment to Paul when he could easily have done so. There is reason to think, however, that there was no grave theological fault in this particular case, and hence no sin upon the part of the priest; and in that case no duty of restitution. Wherefore, if he could not find Paul in time to prevent the distribution of the money among the poor, he would not be bound to make good in the name of Paul. If he has good reason to believe that his penitent would not agree to the second restitution, and would feel inimical because of the erroneous decision, he could leave Paul in good faith, either for a time or for good. Hasty decisions of the confessor are full of danger and are prone to work evil.

LXX. AN IGNORANT PENITENT

Case.—Father Caius hears Bertha's confession, and from the very beginning discovers that she is extremely ignorant about her religion. To the question, "Are there more Gods than one?" she answers correctly. She knows also of God's justice, of the existence of Heaven and hell. But that is all. When asked how many Divine Persons there are, she becomes confused, saying first seven, then one, then three. The question, "Who died for us upon the cross?" she is unable to answer.

Question.—What should be done with such a penitent?

Solution.—Father Caius should admonish this ignorant penitent of her obligation to receive religious instruction, and the administration of the Sacrament should be postponed until due instruction has been imparted. If the confessor foresees that on account of shyness or other obstacles she would not come to be instructed, or if perhaps he will not be able later to instruct her himself, for instance, if he is a missionary, then he must not dismiss her, saying that he can do nothing with her, that she must seek instruction, but he must then and there teach her the most necessary truths (S. Alph. *L.* VI. 608).

Indispensably necessary for the validity of absolution is the knowledge of the existence of one God and of His justice (Heb., II. 6). Whether the knowledge of the Divine Trinity and of the Incarnation is indispensably necessary (*necessitate medii*) is a matter of dispute among theologians. A list of literature on this point we find in S. Alphonsus *L.* II. *n.* 2. Since probably the confessor is pressed for time he may content himself by making Bertha ac-

quainted *hic et nunc* with the last-mentioned two articles of faith; then, in regard to knowledge of the mysteries of the faith, she is capable of receiving absolution. It is not necessary to impart instruction strictly according to the catechism. Caius may say: "You know that there is but one God. But there are three Divine Persons. How many Divine Persons are there? They are called Father, Son, Holy Ghost. What are they?" In the same way he should instruct and question her concerning the Incarnation.

In the event of Bertha having gone to confession often before, it may be presumed that the confessors did their duty as *doctores*. What, however, is to be done if it becomes apparent that Bertha has not been questioned by any confessor, much less instructed? Ballerini is of opinion that, according to the principles of probability, the ignorance of the mysteries in question would not necessitate a repetition of previous confessions, and in support of his decision he quotes St. Alphonsus *L.* VI. *n.* 505: *"Advertendum, non esse cogendos poenitentes ad repetendas confessiones, nisi moraliter certo constet, eas fuisse invalidas."* The Saint, however, does not seem to allow the application of this procedure to a case like ours, because he calls the view of the necessity (*necessitate medii*) of the distinct knowledge of both mysteries *communior et* (*videtur*) *probabilior,* and concludes his investigation with the following words: *"Quapropter, cum ipse adverterit, confessionem suam ob ignorantiam mysteriorum SS. Trinitatis, aut Incarnationis Jesu Christi fuisse probabiliter validam, sed etiam probabiliter nullam, tenetur, postquam de illis mysteriis instructus fuerit, confessionem iterare."* In these two points made by St. Alphonsus there is no contradiction, they are in perfect accord. In *L. VI.* 505, he treats of certain acts which the penitent positively performed and in regard to them applies the principle *"in dubio praesumitur rite factum, quod factum*

est" as also *"in dubio standum est pro valore actus."* The teaching of St. Alphonsus on the point referred to is strictly in accordance with this principle. In *L.* II. 2, namely, in our case, he treats of something quite different, namely of a *subjectum capax* or *incapax Sacramenti.* Here there can be no presumption of validity. Here comes into consideration the proposition condemned by Innocent XI. *"Non est illicitum in Sacramentis conferendis sequi opinionem probabilem de valore Sacramenti, relicta tutiori."* Therefore the Saint insists upon the *iteratio confessionis* (*cf. L.* I. 48. *H. A.* I. 25). Moreover, probably every conscientious confessor, guided by Ballerini, would cause Bertha to repeat her confessions, as this course evidently would present no particular difficulty and *in praxi* one prefers to choose the safer way.

LXXI. TREATMENT OF AN HABITUAL DRUNKARD IN THE CONFESSIONAL

Case.—Assuredly habitual drunkards are no small trial to the confessor, especially when they make not the slightest attempt at amendment. How is this class of habitual sinners to be treated *in confessionali?* We have here in mind the notorious drunkard who adds to his guilt by giving scandal to others. In his work on Moral, Noldin says on this subject: *"Recidivi in ebrietate et qua tales publice noti, qui singulis fere hebdomadis vel saepius adhuc se inebriant, non omnino a Sacramentis repellendi, sed ordinarie nec statim ad illa admittendi sunt. Non primum, quia de nullius hominis emendatione desperandum est; non alterum, imprimis quia absolvi nequit, qui post breve tempus propositum violaturus praevidetur, nisi urgeat necessitas: etenim timendum esset scandalum, si statim post suscepta sacramenta relaberetur; deinde quia publicum scandalum antea reparari debet. Itaque ejusmodi poenitenti differenda est absolutio, donec aliquatenus saltem se emendaverit. Quin etiam in casu, quo ob extraordinarium signum poenitentiae statim absolutus fuisset, praestat, eum non statim ad s. communionem admittere, tum ut publicum scandalum reali emendatione interim reparetur, tum ut scandalum ex relapsu forte oriturum praecaveatur" (Summa Theol. Mor. ed. V. P. III. n.* 411).

Question.—What about the matter when there is question of the Easter Confession?

Solution.—This kind of habitual sinner usually comes to confession only at Easter. Assuredly even then a *recidivus ex genere ebriorum* must not be absolved if the confessor has reason to

doubt his disposition. Such doubt is certainly present if the penitent on his part has done nothing to reform, and has not avoided the occasions. It would be wrong to think "if he is disposed *hic et nunc* then with a good conscience I can give him absolution." True, every habitual or occasional sinner may be absolved if only in *actu* he is disposed, and may be regarded as such by the confessor, even if later the penitent does not amend, and the confessor foresees that he will relapse into his former habits. *"Recidivus, qui prudenter dispositus judicatur, per se semper absolvi potest: qui enim vere judicari potest dispositus, absolvi potest, licet recidivus sit: ad validam enim et licitam absolutionem aliud non requiritur, nisi ut actu dispositus sit; ad veram dispositionem autem non requiritur futura emendatio, neque illam impedit praevisio futuri relapsus"* (*Ibidem, n.* 410). *"Occasionarius et recidivus semper absolvi potest, modo a confessario prudenter judicari possit vere dispositus, qualecumque sit signum, in quo fundetur ejus judicium: sive ordinarium sive extraordinarium, sive poenitens ad confessionem illud attulerit sive in confessione ad monitionem confessarii tandem exhibuerit"* (*Ibid., n.* 411).

But now I ask: may a *recidivus,* as in our case, who for years, perhaps, has given his confessor empty promises, and has made no earnest attempt or hardly any to break with his sinful habit, be regarded, *prudenter,* as *vere dispositus?* How, then, may a confessor absolve such a one simply because he appears disposed *hic et nunc?* (Unfortunately there are confessors who absolve everyone if only they say "yes." It is hardly necessary to remark that such administration of the tribunal of Penance is *in damnum* perhaps even *in perditionem animarum.*) There could be only one valid reason to exercise clemency in the case of such a penitent, and that is the *periculum diffamationis,* in the event of his not

being absolved. But this is not as bad as it seems at first sight. If in a town a habitual drunkard is publicly known as such, then there can no longer be talk of defaming.

However, if the confessor believes for good reasons that he ought to absolve him, then he should likewise permit him to receive holy Communion; for though Noldin considers it prudent not to admit a notorious drunkard at once to holy Communion, even if he has been absolved *propter signum extraordinarium poenitentiae,* still on occasion of the Easter Communion a milder interpretation may prevail; on the one hand *quia urget praeceptum,* and, on the other, because the faithful take less scandal, just because it is the Easter Communion.

LXXII. A ZEALOUS PENITENT DISCOURAGED BY IMPERFECTIONS AND VENIAL SINS

Case.—Anna has a great desire for Christian perfection. Accordingly she goes to confession every week, and receives Holy Communion daily, whenever possible, hoping thus to attain by sacramental graces a steadily increasing purity of heart. The results, however, do not meet her expectations, she is conscious of still possessing many faults, hence she loses courage and weakens in her efforts.

Question.—How should a confessor treat his penitent in order to encourage her faithful adherence to the practice of daily Communion?

Solution.—In the well-known decree of December 20, 1905, hope is expressed that Communicants who receive daily, with the right dispositions and in the state of grace, may also gradually avoid venial sins. Anna desires to be freed of her faults, hence her zeal in receiving the Sacraments. She had hoped to draw this fruit quickly from daily Communion, but she is disappointed in her expectations. The confessor, as a wise physician of the soul, must, before all things, inquire into the causes of this disappointment. Possibly it is brought about by the fact that her expectations were exaggerated, or even presumptuous. Anna believed that she would be freed not only from all sins, but even from all imperfections. As imperfections, the moralists designate either acts or omissions contrary, not to a positive commandment, but to a counsel; another definition classes them as violations of the moral law which are quite involuntary, such as distraction in prayer, involuntary emotions of

anger, envy, etc., and, in general, all faults that proceed from guiltless ignorance or inattention. This latter definition, where there is discussion of the difference between imperfections and venial sins, is to be preferred to the former, since imperfections in the first sense are not always free from real sin, while, as defined in the other sense, they never include guilt. To free one's self by degrees from such imperfections, in as far as this is possible to human beings, should be the endeavor of every Christian, but he should not forget that he can never achieve this perfectly in this life. Perfect purity is exclusively the privilege of the spirits dwelling in Heaven; on earth even the just have always occasion to accuse themselves of moral shortcomings, and to lament with the Apostle: "Who will deliver me from the body of this death?"

It would be presumptuous to insist on the gift of angelic purity, and it would surely lead to various errors. To a penitent with such aspirations St. Francis of Sales gave the admonition, "Often we take pains to become good angels, and in our zeal we neglect to be good men and good women." He pointed out the importance of being patient with oneself: "Patience is that virtue which most assures us perfection. We must practice it in dealing with others, but it is equally necessary to exercise it with ourselves. Those who aspire to a perfect charity, must have more patience with themselves than with others. We must endure our imperfections in order to gain perfection."

With venial sins it is different. These are more or less voluntary violations of the moral law, for this reason they offend God, and in this aspect they are to be abhorred as a positive evil. While in this life it is not possible to avoid always even the least of venial sins, yet it is possible to lessen their number, or to keep oneself entirely free from a certain species of them. That the penitent may

never become lax in this endeavor, should be the special solicitude of the confessor. He will, in order to avoid the rock of extreme severity, and in order to discourage neither himself nor his penitent, clearly distinguish between sins of frailty and sins that result from a perversity of the will, or from bad habits. Even the saints were not wholly free from sins of frailty; they, too, had to confess with St. James: *"In multis offendimus omnes."* Such faults enter only too easily into our minds, actions and omissions; they can, however, be just as easily wiped out again, especially through prayer, as St. Augustine teaches: *"De quotidianis brevibus levibusque peccatis, sine quibus haec vita non ducitur, quotidiana fidelium oratio satisfacit . . . delet omnino haec oratio minima et quotidiana peccata," Ench.* 71. As a matter of fact these very faults of weakness work for the good of those who truly love God; for as they are thus continually reminded of their frailty, they are more firmly imbued with an humble self-knowledge. P. Scupoli tell us how advantageous is this knowledge of our faults: "O happy knowledge (of our frailty) which sanctifies us in this world, and uplifts us to the glory of Heaven! O splendid light, proceeding from the darkness and flooding the soul with celestial clarity! O hidden pearl, shining forth from our obscurity! O nothingness that uplifts us to the possession of all things!" If the saints received extraordinary graces from God, not a little of this was due to the fact that they chose to give themselves up to the contemplation of their own nothingness, and fostered within themselves the spirit of humility and contrition.

Upon this important point Anna must be enlightened so that what should really inspire confidence and courage may not become a cause for discouragement.

When, however, there is question of faults arising from perversity of will, and deliberately committed, then the case assumes

anotner aspect. A spiritual condition of this kind requires careful treatment on the part of the confessor.

How harmful such faults are to our striving for virtue is aptly told by P. Lancicius. He writes, in the introduction to an exhaustive treatise upon venial sins: "During the forty-seven years of my priesthood, I have been at different times the spiritual director of lay persons and of Religious. In this work I was made aware that many persons received great graces from the Lord, but with the greater number I saw that they received lesser graces than the Divine bounty would have poured out upon them if they had been more diligent in avoiding numerous venial sins, especially those committed with deliberation."

Should the confessor perceive that Anna is enmeshed in faults of this kind, that she commits certain faults from habit, then he will, first of all, prescribe the remedies needed against her shortcomings, and impress upon her the conscientious use of the same. Some pious, but little instructed, persons fall into the error that sacramental grace will do all and that it will suffice to receive Communion frequently in order to attain the heights of Christian perfection. If Anna sincerely desires to be cured of moral ills she will assuredly show her good will by a diligent use of the prescribed remedies, and thus gradually attain the desired goal. Should Anna, however, manifest a lack of good intention, by neglecting to cooperate with sacramental grace by her own suitable effort, then the prudent confessor will regard her case as critical, and, if necessary, treat her with warranted severity. Such souls are frequently in grave danger of straying afar from the path of virtue. In the case of such persons the question arises: Have they, indeed, the pious disposition, which is before all things requisite for daily Communion? Are they, indeed, in the state of grace? Admittedly they will not com-

mit any sin which they regard as a grievous sin. Yet, what security is there, in their deplorable condition, that their supposedly venial sins are not really mortal sins, or at least will not soon lead to such? In judging sinful acts, which Moralists hold to be grievous sins *ex genere suo,* which, however, may be slight on account of *parvitas materiae,* it is often very difficult to define the borderline that divides venial sins and grievous ones, and, since even the most skilled Casuists often admit their inability to distinguish in this matter, how can a person, less well-informed, without conscious self-deception claim that this borderline has not been overstepped, when she has over and over again sinned deliberately against charity, justice, etc.? Moreover the neglected grace is gradually withdrawn from the tepid soul, and the Divine warning is being fulfilled which was pronounced upon the Bishop of Ephesus: "Because thou art tepid I will begin to vomit thee out of my mouth." There is, finally a particular point to be taken into consideration regarding such persons. Not infrequently the habitual faults of those avowing the aspiration to a devout life are yielding scandal. Their lack of charity, of fidelity to duty, of humility, meekness, etc., casts not seldom a dark shadow upon piety itself and brings it into discredit. The scandal which the world takes at the devout is surely often a pharisaical scandal-taking, their malice gleefully making small faults the occasion for vilification of all religion. Unfortunately, however, there is sometimes real scandal of this sort which the confessor must combat with energy. Should all his endeavors fail, then he must not hesitate to keep such persons, who evidently misuse the sacraments, from approaching them until they are induced to make a better use of the same.

LXXIII. APPARITIONS OF POOR SOULS FROM PURGATORY

Case.—Claudia, a very sensible and staid woman, tells her confessor the following experience: "A few weeks ago my mother, a very conscientious and devout person, died suddenly. Night before last she appeared to me—I was wide awake—her expression was sad and troubled; after a short while she spoke to me, saying that she had to endure great suffering in purgatory, and she asked me to have a Mass said for her on a privileged altar, to offer up Communion five times, to make the Stations of the Cross once, and to say the rosary on three consecutive Saturdays. Then she vanished. This apparition was quite unforeseen and made a profound and painful impression upon me, so that I feel impelled to comply with her request. To-day I wish to begin with offering up Holy Communion. But first I would ask you to tell me whether I am allowed to heed the apparition and the request."

Solution.—The chief points which the confessor must here consider are the following:

1. The confessor is not at liberty to doubt the possibility of such apparitions (*Deo sic volente*), or abruptly to declare them a case of superstition. There are many, of course, who deny the possibility of such apparitions, and who speak of them in terms of derision and mockery; but if we inquire from what kind of people such denunciation emanates we find they are those who deny the existence of God, and the immortality of the soul, or purgatory, or at least doubt these fundamental truths; or those infected by the canker of rationalism, who therefore thrust from them everything belonging to the

realm of the supernatural. The opinion of such persons is of no value in the present case.

That an intercourse may take place between the world of spirits and the world of men is plainly evident from the first to the last page of the Bible. It begins with the appearance of the devil in Paradise, and concludes with the apparition of the Angel to the seer of Patmos. Also there is evidence of apparitions of departed human souls. Judas Machabeus had in a dream a vision of two saints long departed, the high priest Onias and the prophet Jeremias, the latter handing him a golden sword for the holy combat, and the author of the book calls this dream worthy of belief (*cf.* II. Mach. 15, 11). At the transfiguration of Christ on Tabor there appeared Moses and Elias; the three disciples, Peter, James, and his brother John, beheld them and heard them converse with the Lord (*cf.* Matt. 17, 1). At the resurrection of the Redeemer many saints left their tombs and appeared to many persons in Jerusalem (*cf.* Matt. 17, 53). Why, then, might not the souls in purgatory by Divine permission or disposition, appear to the living, be it to invoke their assistance, or to bring them a Divine warning concerning their salvation?

But it is not Holy Writ alone that gives evidence of the possibility of a communication between the spirit world and that of men; we have from all centuries of the Church most credible witnesses to this fact, among them persons of high standing in the Church. Regarding the abundant and unimpeachable testimony of these credible persons, who either relate such appearances from irrefutable sources, as, for instance, Saint Peter Damian (*Opusc:* xxxiv.), or to whom such visions appeared, as Saint Theresa, the theologians say: "It is certain that the souls suffering in purgatory have appeared at times to the eyes of their friends and rela-

tions, with sad and troubled mien, in order to implore of them their prayers and their intercession." (Scaramelli.) St. Thomas of Aquin thus declares himself on this subject: "We must distinguish regarding the departed souls as to what happens to them according to the laws of nature and according to the dispositions of Divine providence, because, as St. Augustine says, different are the limitations of things human, different the manifestations of Divine power, different what happens in the natural order, and different the miraculous. According to the natural order, the departed souls, after they have been placed by God in their abode, are barred from association with the living. Divine Providence, however, permits them at times to leave their abode to appear to the eyes of men, as is related by St. Augustine of the martyr Felix, who appeared visibly to the citizens of Nola, when they were beset by their enemies. We may further believe that the souls undergoing punishment are sometimes allowed to appear to the living, either for the instruction and warning of men, or, in the case of those in purgatory, to implore aid, as is proved by many incidents related by St. Gregory the Great (*Suppl. qu. 69. a. 3*). St. Augustine terms it a "great impertinence" to declare such apparitions impossible, since so many proofs and so many men inspired by the spirit of God can be quoted for their actual occurrence. (*"Magnae impudentiae est, negare animas identidem e suis sedibus ad nos emitti cum tot viri sapientes et Deo pleni idipsum ratione et experimento comprobent suo." De cura pro mortuis.*) Similarly writes Benedict XIV, in his work on the canonization and beatification of the servants of God. Hence Dr. Ernest Müller teaches: *"Certum est, mortuorum apparitiones esse possibiles quia et angeli licet spiritus sint, apparent—et quia plurimas mortuorum apparitiones genuina historia refert."*

2. In the case of an apparition of a suffering soul from purgatory,

inquiry must be made whether there are circumstances that point to superstition, or otherwise render the matter suspicious.

Suspicious would be the desire for such an apparition; it would point to presumption, or to idle curiosity, even to conceit. Such coveting excites the imagination, so that one readily sees and hears the desired things, moreover God may permit in punishment of such sins a mockery by evil spirits. While evil spirits, as St. Augustine, St. Chrysostom, St. Thomas and other theologians teach, cannot cite the souls of the departed either from purgatory or from hell, they may assume their shapes, and thus deceive the curious. A second, even more important point, is, that the persons who claim that a soul from purgatory has appeared to them, have done nothing to bring it about, have not employed superstitious means, that the purpose of the vision is a good one, that the speech of the apparition contains nothing contrary to faith or good morals, nor is otherwise suspicious. The temperament of the persons who have had visions must also be taken into account; it makes a great difference whether they are inclined to superstition, or credulous and easily deceived, whether they deserve belief, or whether they have a well-deserved reputation for fibbing. It would be well for the confessor to ask this woman what impression the vision made upon her. If she feels confirmed in the faith, and induced to acts of piety and charity, this will speak in its favor. Finally, it is to be ascertained whether the woman was convinced from the beginning of the truth of the apparition. If God permits or wills a suffering soul in purgatory to appear to friend or relative, it may be assumed that God also grants to the person certainty about the truth of the apparition.

If all these points are ascertained to be favorable, the confessor may regard the apparition as probable and so inform his penitent, all the more as she obediently submits the matter for his decision.

3. To render a positive decision as to whether one of the poor souls had really appeared to a penitent will be very difficult for the confessor, even if the facts favor such a decision. Such decision, moreover, is not necessary; a well-grounded probability is sufficient warrant to tell the penitent that she will not be guilty of superstition if she accepts the truth of the apparition, and to admonish her to fulfill the request of the poor soul, all the more so when the things requested are most worthy, and certainly very beneficial to the souls in purgatory. After the penitent has performed the good works asked for, she should not fail to continue her prayers for this soul, even if the soul appears a second time and declares that she is released from purgatory. No matter how we might wish to believe the truth of such a message, there is not such certainty as to exclude all possibility of delusion. Hence in order to prevent a detriment to the departed, the penitent should offer her prayers and good works with the intention that if this particular soul no longer needs them, God may accept them for other souls. Caution should be exercised not to talk freely about the vision, as such things are not rightly comprehended by everybody.

4. If the confessor perceives that the apparition as related by the woman is connected with suspicious circumstances, he must give his penitent the necessary admonition; he must reprove the undue curiosity of which she probably has been guilty, also point out how dangerous such undue desire is, and forbid everything that savors of superstition or fortune-telling, etc., move her to contrition and good resolutions, and exhort her to confine herself to the prayers and good works practised and prescribed by the Church.

From the above follows the answer to the question asked about this case. There seems to be nothing here to arouse suspicion and circumstances seem to favor the conclusion that there was an appari-

tion. The request made of Claudia corresponds perfectly to the practise of the Church.

A confessor will do well to be slow in giving belief to reports of apparitions, because while they may happen, they happen very rarely. On the other hand, deception and illusion are easily possible. It would be an error to deny the possibility of such apparitions, but it would also be a grave error to believe too readily the reports of such apparitions, as for one thing it would certainly promote superstition.

LXXIV. STREET CONFESSIONS

Case.—Columbanus, a priest in good standing, passing along the street, is accosted by a layman, who after a few minutes' conversation requests the priest to hear his confession then and there. After some hesitation, the priest does so, and finding no reserved case, he imparts absolution.

Question.—Did Father Columbanus act correctly under these circumstances?

Solution.—The sacred character of the Sacrament of Penance demands that the graces of the Sacrament should be imparted in a solemn and sacred way. Hence the Church has determined that all confessions are ordinarily to be heard in a church; by the name *church* are *not* to be understood private oratories; hence confessions are not to be heard in private oratories, unless special permission be granted by the Bishop of the Diocese for such a practice. The Councils of Baltimore are explicit enough on this point, and they authoritatively declare that confessionals are to be erected in all churches in suitable and convenient places, where the faithful may reverently receive the holy Sacrament of Penance. Strictly speaking, then, confessions are not to be heard outside of a church unless circumstances are otherwise than ordinary. On the other hand, all authorities concede that in the presence of extraordinary conditions confessions may be heard anywhere, provided the place be in keeping with the dignity of the Sacrament; this demands, as the minimum, that the place be "decent." Of course, in cases of urgent necessity, as in the presence of danger of death, the spiritual welfare of the soul will call for the administration of the Sacrament anywhere. As to the present case, it must be said that the *practice* of

hearing confessions on the street, when there is no question of danger of death, is not to be countenanced. It can easily be seen that, were such a procedure admitted as a general thing, the way would be opened to extreme carelessness, and no proper safeguard could then be provided whereby the reverence due to the Sacrament, as a grace-giving institution of Christ, could be maintained. Hence the Church has wisely legislated against such a custom.

However, it cannot be denied that there may be times, not speaking of the needs of the moribund, when it would not be illicit to hear confessions outside of a church, and even on the street. Where there is a sufficiently grave reason, the Church would not be against the imparting of absolution (*per modum actionis*) even on the street. If, for instance, a man found himself in mortal sin, and to remain in that condition for any length of time grievously disturbed him; or if he had to go on a journey of duty, exposing himself to danger on the way, and if in neither case he could go to a church to make his confession, assuredly he would be justified in confessing even on the street. He might be a sea-voyager, about to take ship for a distant land, and by reason of lack of time unable to go to a church. He would be compelled to sail the ocean with his soul burdened by sin, unless he could confess to a priest whom he fortunately meets on the dock. To take advantage of his opportunity to remove his grave spiritual danger would undoubtedly be justifiable. The action of Columbanus would have to be judged in the light of the principles just set forth. If grave and weighty reasons were present, his action was licit, but it was illicit in the absence of sufficient reason. Indiscriminate hearing of confessions on the street cannot be defended against the positive legislation of the Church determining the proper place for the reverential administration on this Sacrament.

LXXV. ABSOLUTION ON THE BATTLEFIELD

CASE.—A regiment of Catholic soldiers, doing service "somewhere in France," is called upon to engage in active strife. Patritius, their chaplain, realizing the impossibility of hearing the soldiers' confessions individually before the hour appointed for them to take their places in the trenches at the front, acted as follows:

In a brief sermon he counseled them to make sincere acts of contrition, and assured them that he would pronounce over them the words of general common absolution and exhorted them to approach the altar for the reception of Holy Communion, and instructed them to go to confession in the ordinary way the first opportunity they had, should any of them survive the danger which then threatened them.

Questions.—(1) Could Patritius validly and licitly give absolution to a multitude by pronouncing the formula once only, provided that a change be made from the singular to the plural number where required? (2) Did Patritius act rightly in administering Communion to the soldiers thus absolved? (3) Should he have insisted upon a subsequent integral confession if opportunity were given them to make such a confession? (4) What should be said about the question of the fast?

Ad 1. Patritius could validly and licitly absolve in the manner described. All the requisite conditions for valid absolution are present in the case, and necessity guarantees its licitness. (Cf. Sabetti-Barrett-*De Forma Sacramenti Poenit,* p. 643, *res. ad Quar.* 50.)

Ad 2. Patritius did act rightly in exhorting the soldiers to receive Holy Communion. In the declaration of the Sacra Poeniten-

tiaria Apostolica dated Feb. 6, 1915, it is expressly stated: *Nihil obstare quominus sic absoluti in praefatis adjunctis ad sacram Eucharistiam suscipiendam admittantur.*

Ad 3. In the same *declaratio* just cited it is prescribed as follows: *Ne omittant vero cappellani militum, data opportunitate, eos docere absolutionem sic impertiendam non esse profuturam, nisi rite dispositi fuerint, iisdemque obligationem manere integram confessionem suo tempore peragendi, si periculum evaserint.*

Ad 4. A decree of the Sacra Congregatio, *De disciplina Sacramentorum,* dated Feb. 11, 1915, reads as follows: *Milites ad proelium vocatos (i soldati sual fronte) admitti posse, servatis servandis, ad Sacram Mensam Eucharisticam per modum viatici.*

Communio per modum viatici may be given to persons not fasting. In the case in question there may be no possibility, at least without a very great inconvenience, of observing the *jejunium naturale.* Hence the soldiers may approach Communion even though not fasting. (Noldin—*De Subjecto Eucharistiae,* No. 154. Sabetti-Barrett, p. 579, *res. ad Quaer.* 10.)

LXXVI. INDULGENCE OF THE FORTY HOURS

Case.—Felix, a country pastor, holds the devotion of the Forty Hours regularly, as required by the law of his diocese. The Blessed Sacrament is exposed all day and reposed at night. But the pastor is much disturbed because during the day, and for many hours, the Divine King is left absolutely without an adorer. His people live at a distance and cannot, or will not, desert their work to spend an hour or two with the Lord. They are very faithful in coming in the evening to the devotions, and nearly all approach the Sacraments during this time of special grace. But it is impossible to bring even a small number during the day to "watch and pray." The pastor himself must spend all the day as the guard of honor. He wishes to know whether or not he could repose the Blessed Sacrament during the day and expose it for the usual devotions in the evening, when the good people throng the church, often coming for miles around.

Solution.—It seems that conditions such as just described are quite prevalent in rural districts. We think that under the circumstances, it is the pastor's duty to consult the bishop, and, having informed him of the case, to abide by his decision. The pastor cannot of his own authority solve the difficulty in his own way. It would not be unreasonable for him to repose the Blessed Sacrament after the morning Mass when the people return to their homes, but the further question of the spiritual good, that is, in the present case, the indulgences, which are extraordinary during the Forty Hours devotion, is not to be forgotten. In the Instruction of the Congregation of Rites concerning this devotion the rule was laid down that the

adoration should not be interrupted. Hence in religious houses the custom prevails of nocturnal adoration. The Sacred Congregation ultimately allowed an interruption and sanctioned nocturnal reposition, and granted an indult safeguarding the extraordinary indulgences of the devotion. It is clear that such a concession would not include the interruption suggested by our country pastor. Hence were he to adopt the above-mentioned practice he would seriously interfere with the much-sought-for indulgence. This would not be fair to the people of the parish who, out of their devotion, make the sacrifices entailed in their effort to gain the indulgence, and who, if they knew that they could not gain their object, might be loathe to attend even the evening devotions. Hence, the only thing the pastor can do is to see his bishop and let him, through his ordinary or extraordinary faculties, solve the difficulty and sanction the practice.

LXXVII. THE SCAPULAR MEDAL

Case.—Last summer, while railroading through England, Father Titus journeyed with some Irish soldiers who were bound for the front. Their splendid devotion to Mary Immaculate showed itself in the scapular which they were proudly wearing. Some, who had no scapulars, asked the priest for a pair, but as he had none with him, he determined to give them medals from Lourdes which had been blessed at the shrine, and which he again blessed before giving to them. He knew that the Holy See had allowed the use of medals in place of the scapular, so his mind was at ease. Since then Father Titus has heard that only special medals can be used for the gaining of the scapular indulgence.

Question.—Did Father Titus do right?

Solution.—Father Titus' action was sacerdotal and praiseworthy. The simple faith and prayerfulness of the soldiers going to the front must have been pleasing to Almighty God, and it surely won for them at least the spiritual protection of the Mother of Christ, whom they intended to honor by scapular or medal. Yet it does not follow that they gained the scapular indulgence. The fact that the medal was from Lourdes and had been blessed there does not attach to it the indulgence granted by Pius X. in 1910. The conditions imposed by the Pope for the gaining of the indulgence have to be met. In general these conditions are: (1) Enrollment in the scapular by a priest having the proper faculties. (2) Wearing of the scapular, or of its substitute, the medal. (3) Blessing of the medal as prescribed. (4) The medal to be of the type determined by the Holy See and commonly known as the scapular medal. If all these conditions were fulfilled, then the soldiers could

gain the indulgence given for the wearing of the scapular. That they were not, is rendered certain by the fact that the medal given by the priest was a Lourdes medal and not a scapular medal. Again, the question arises as to the faculties of the priest. Did he have the necessary faculties for blessing scapular medals? In March, 1912, concessions were made in favor of soldiers (*sub armis*), but even here the medal of investment had to be blessed by a priest having such faculties. In November, 1914, Benedict XV. granted faculties to all priests, even to those who are not approved for the hearing of Confessions, whereby they may bless and indulgence the scapular medal. This concession is granted only in favor of soldiers, and of those soldiers whose countries are at war, and is to last only for the duration of the war. It is to be noted again that only the regular scapular medal can be blessed under this extension of faculties. Any priest, from, or in, any country, can bless these medals, provided they are intended for soldiers under arms of the nations at war. Hence this indulgence of the scapular, even in these days, is not effective in relation to the Lourdes medal.

LXXVII. THE LAST SACRAMENTS SACRILEGIOUSLY RECEIVED

Case.—Orlandus, grievously sick, was given the last sacraments in the morning by his parish priest. In the course of the same morning he sends for Raymond, another priest, and confesses with tears that in his confession the same morning he had purposely omitted a mortal sin, and hence had received the last sacraments unworthily.

Question.—What obligations arise therefrom:

1. For the sick Orlandus.
2. For the confessor Raymond?

Solution:

1. Orlandus manifestly is guilty of a threefold sacrilege, and has not fulfilled the Divine and ecclesiastical law of confessing his grievous sins in immediate danger of death and of receiving the holy Viaticum, for here, even more than in the case of the Easter Communion, the obligation is not satisfied by an unworthy reception, as is evident from the nature of the matter and also from the 55th of the propositions rejected by Innocent XI. (Denzinger, No. 1205). Hence, Orlandus is obliged, under grievous sin, to confess his sins validly and to receive worthily the holy Viaticum. As regards the Sacrament of Extreme Unction, the dying man is not strictly obliged *per se* to receive the same, as St. Thomas and St. Alphonsus (L. VI. n. 733 seq.) *cum sententia communi* teach, although a case when one *per accidens* is strictly obliged thereto may not infrequently occur.

Even though Orlandus received Extreme Unction unworthily,

the sacrament was valid, and only its effects remain suspended owing to lack of the necessary disposition of the recipient. These effects become actual when the disposition previously lacking is produced, either by an imperfect contrition (*attritio*) combined with actual reception of the Sacrament of Penance, or by a perfect contrition coupled with intention to confess (*per contritionem cum voto sacramenti*) as is taught by theologians as so well founded an opinion that it may be regarded practically as certain. (Compare St. Alphonsus *L.* VI. *n.* 87 *seq.*) Therefore, in our case Extreme Unction need not be repeated, and would according to the Ritual be even unlawful: since in one and the same illness Extreme Unction must not be repeated unless the illness is of long duration, or unless the patient had meanwhile recovered, and is again in danger of death.

2. About the obligations, which the confessor Raymond has to fulfil, the following points should be noted: (a) Since he is not the parish priest of Orlandus his obligation to help the sick man out of his difficulty is not based upon motives of justice, but there is the obligation of charity. (b) This help consists before all in assisting the patient to make a good confession. This he may do without knowledge or permission of the parish priest, as it is generally taught that in the case of confessions of the sick, any approved priest, also any Order priest approved by the bishop, may in the diocese *approbantis episcopi* exercise his jurisdiction at all times and everywhere, without requiring the special permission of the sick man's pastor or of his bishop: but in such cases the pastor should be made aware that the confession has been heard: "*saltem per scripturam apud ipsum infirmum relinquendam*" (Clement X., July 21, 1670). This notice to the pastor is in our case manifestly to be omitted, in order not to put opprobrium upon the penitent.

(c) Regarding a repeated administration of the Viaticum, it is certain that the sacrilegiously received Communion does not, like Extreme Unction, produce its effects of grace subsequently when the lacking disposition has been supplied (S. Alph. *L.* VI. *n.* 87 *cum sententia communi*) and, therefore, it is necessary, unless special difficulties produce a moral impossibility which excuses. This necessity of again receiving the Viaticum is not to be urged upon one who is not aware of this obligation if there is reason to fear that, to the evident danger of his salvation, he would *mala fide* refuse to comply, as Lehmkuhl and others rightly observe.

If the dying man cannot be expected to live another day, a difficulty would occur in our case, with regard to the Church prohibition concerning the reception of holy Communion twice on one and the same day. But this difficulty disappears if we apply here the evidently correct principle: *majus est praeceptum divinum sumendi viaticum, quam prohibitio ecclessiae bis in die communicandi.*

A further difficulty lies in the danger for the secret of confession and the good name of Orlandus if on the same or on the following day he should receive the Viaticum for the second time. If to avoid this danger there is no other way, then, according to St. Alphonsus and others, the priest is allowed in such need to take holy Communion to the sick man secretly. Finally, one might find a new difficulty in the Church prohibition of giving the Viaticum without permission of the pastor. This permission, however, can and must in our case be presumed, since the authorities unanimously teach: *"quia tunc praesumitur voluntas episcopi aut Papae"* (S. Alph. *L.* VI. *n.* 236). Moreover, the pastor in administering Viaticum had exercised his authority, which does not extend to the repetition of the same, just as in an analogous case one who

received Easter Communion unworthily in his parish church is obliged to repeat the same in a worthy manner, but may do so in any other church *"quia jam a pastore sufficienter agnoscitur"* (Marc *n.* 1572).

LXXIX. CONDITIONAL AND UNCONDITIONAL ADMINISTRATION OF EXTREME UNCTION IN THE CASE OF UNCONSCIOUSNESS

Case.—Cajus, a young priest, was called hurriedly to a gravely sick man whom we will name Titius. He finds the patient already unconscious, which was all the more distressing to Cajus as he had heard of him as a man who had long neglected his religious duties, had seldom or never visited a church, and had for some years neglected to fulfill his Easter duty. Cajus bestows upon him conditional absolution, and then, also conditionally, administers Extreme Unction, together with the general absolution.

Question.—Has Cajus acted correctly, or prudently?

Solution.—That Cajus in this case gave absolution conditionally was quite proper, as according to what he had heard he was naturally in doubt as to the man's moral disposition. It is somewhat different with the administration of Extreme Unction. Cajus should have administered this sacrament *unconditionally,* not conditionally, and this would have been the right and prudent way. And why? Cajus should have distinguished between the *valid* and the *worthy* reception of this sacrament. When there exists a reasonable doubt as to whether a person is physically capable of receiving Extreme Unction, it must always be administered *sub conditione* (*"si capax es"*); for in such a case there is a question of validity. Instances of this kind would be the case of a sick child when there is doubt whether the necessary maturity of understanding has been reached, or that of an imbecile, when it is question whether the sufficient use of reason has ever been present. The same applies to a

case of doubt whether a person is in a passing faintness or whether death has already set in, or, finally, whether the recipient is a Catholic. Since for the valid reception of any sacrament an essential condition is the intention on the part of the recipient—in the case of this sacrament at least a presumable intention—a justified doubt as to the presence of the intention prescribes the conditional administration, for instance in the case that a person before becoming unconscious would have expressed his will not to receive the last sacraments. Indeed, had such a patient so positively refused that a *defectus intentionis* must with certainty be concluded, the sacrament must not be given, on account of the lack of an essential condition.

It is different where it is a matter not of the valid, but of the *worthy* reception of Extreme Unction, of the moral disposition, therefore, of the recipient. Since Extreme Unction is in the first place a *sacramentum vivorum,* and as such is first of all intended for the remission of only venial sins, it must ordinarily be received in the state of grace. In so far, however, as this sacrament may become a *sacramentum mortuorum,* and then takes the place of the Sacrament of Penance, which is the case when a person in grievous sin but *bona fide* receives it, then there are required for its worthy reception at least the dispositions required for the worthy reception of the Sacrament of Penance. May we, therefore, conclude that, where there is a positively reasonable doubt as to the moral disposition of the recipient, this sacrament is to be administered *sub conditione,* and did, therefore, Cajus act quite correctly when he gave to the unconscious Titius Extreme Unction conditionally? No! In our case, despite the requirements of disposition just spoken of, Cajus should have administered the sacrament unconditionally. The Sacrament of Extreme Unction, like Baptism (and this applies also to

Confirmation, Holy Orders and Matrimony), possesses the peculiarity that even where it is received without the necessary dispositions it will exercise its sacramental effects. It revives, *reviviscit* as the theologians say, as soon as the indisposition (*obex gratiae*), which is present on part of the recipient, is removed. This is accomplished by mere attrition provided that after receiving this sacrament the recipient does not commit anew a grievous sin, and is not capable of receiving the Sacrament of Penance (St. Alphonsus, *lib.* VI. *n.* 707; Lehmkuhl II. *n.* 50-52).* But how would it be, if Titius had become unconscious *in actu peccati mortalis,* through intoxication perhaps, or through attempted suicide? Should Cajus then have administered Extreme Unction unconditionally? Again, if this Titius had lived an irreligious life, was a notorious drunkard, libertine, etc., could Cajus without irreverence anoint him unconditionally, when for this reason (*irreverentia*) many Moralists and Pastoral Theologians, amongst them even St. Alphonsus (*Theol. Mor.* I. VI. *n.* 82 and 732) favor a conditional administration? Let us suppose that Titius had really led a notorious and sinful life, or that he fell into his dangerous condition *in actu peccati mortalis,* without previously having given any sign of repentance. And now Cajus appears hurriedly, and gives to the unconscious Titius absolution with the condition *"si es dispositus,"* and administers also Extreme Unction under the same condition. Titius later regains consciousness, for some moments, and, realizing the peril of his soul, awakens sorrow for his past sins, although only an imperfect sorrow. Cajus, again sent for at once, arrives after Titius has passed away. Had he given Extreme Unction unconditionally, then Titius

* In the preceding case perfect contrition or attrition with the Sacrament of Penance was said to be necessary for reviviscence; but it must be borne in mind that here there is no question of sacrilege and bad faith, as there was in that case.

after arousing contrition would *"per reviviscentiam"* have been reinstated in the state of grace, and thus would have owed his salvation to Extreme Unction. But by administering it with the condition, *"si es dispositus,"* this means of grace of the Church became ineffective for Titius, though in his extreme peril it might have been for him at the last a saving anchor! What a misfortune!

If, therefore, the salvation of a poor sinner may, and often does, depend directly and at the last upon the unconditional administration of Extreme Unction, one may with good conscience follow the view that when a proper disposition has not been evident or is doubtful, Extreme Unction should be given unconditionally. The reflection that through the absolute administration of this means of grace to a possibly unworthy subject the sacrament might suffer irreverence should not have deterred Cajus from administering it absolutely; for, as was said, a subsequent *dispositio sufficiens* revives the sacrament and thus reinstates the poor sinner, perhaps at the last moment, in the state of grace, although at the moment of receiving the sacrament he was morally unworthy. Persons bereft of their senses cannot commit an actual sacrilege. And should not the mere possibility of such *reviviscentia sacramenti* suffice to administer *bona conscientia* Extreme Unction unconditionally? But must not the *minister sacramenti,* as far as lies in his power, follow the *sententia tutior,* i. e., take the utmost care that the sacrament be not dispensed to the unworthy? Yes, the respect due a holy sacrament no doubt requires such caution; yet the case is somewhat different if the recipient of the sacrament is *in extrema necessitate,* which is most certainly true in our case, where every effort must be made to save a threatened soul at the last moment. More than ever, therefore, the principle *"Sacramenta propter homines,"* must be taken into account and to the very extent required by the hope of saving the

sinner, for *"in extremis extrema sunt tentanda."* And since in our case a possible *reviviscentia sacramenti* gives hope of salvation, therefore, the Sacrament of Extreme Unction may and must be administered in a manner that allows a *reviviscentia* to take place: hence, *absolutely.*

Our Cajus will do well in future cases of the administration of Extreme Unction, where unconsciousness has already taken place, to adopt these principles:

1. Where there is a reasonable doubt about the *validity* of the sacrament to be administered, always administer it *conditionate* (*"si capax es"*).

2. Where the *worthy* reception is in doubt, it is always to be administered *absolute* (with previous conditional absolution). This should be done unless it is positively certain that a person wills to die in his unbelief and unrepentance, and unreconciled with his God, which we may never assume with certainty of a person bereft of his senses *"cum homines etiam pessimi et perditissimi in mortis confinia deducti serio salvari cupiant"* and hence to such person, even if he became unconscious after an irreligious life, or indeed *in actu peccati mortalis,* the sacrament should be dispensed *absolute* —of course *excluso scandalo.*

LXXX. EXTREME UNCTION NEGLECTED

Case.—Julian, a pastor, discovers in a non-Catholic hospital a dying woman who had been away from the Sacraments for many years. After long persuasion the zealous pastor arouses in her a sense of her pitiable condition. She consents to go to Confession and to receive Viaticum; she refuses, however, to allow the priest to administer the Sacrament of Extreme Unction. She is convinced that she will soon recover from her malady and entertains the notion that the reception of the Sacrament of the dying means the certain and rapid approach of death. Julian is only too glad of the chance to administer to her the other Sacraments, and does not urge very strongly the question of Extreme Unction. He hears her confession and gives her Holy Communion. Upon his return, three days later, he finds that the patient died suddenly the previous night. He is much disturbed over what he terms his neglect of a serious duty, and now seeks advice upon the matter.

Question.—Was Julian to blame?

Solution.—As the law stands, a pastor, or any priest having the care of souls, is obliged by his very office, and under the penalty of mortal sin, to administer this Sacrament to his subjects who may be placed in danger of death. And the law declares emphatically that he must do so even at the risk of his own life when the patient's salvation depends upon this Sacrament, that is, when this is the only Sacrament that the dying person can receive. The Roman Catechism states expressly that a pastor is guilty of mortal sin if he delays the administration of this efficacious rite until the last hour of the sick person's life, or until this person's senses are impaired. In such an event there is a grave injury done to the peni-

tent, who may possibly die without the reception of this Sacrament, as the woman in this case actually did, and who is certainly deprived of its good effects at the very time when these are most needed. But circumstances may minimize, or entirely remove, this obligation of the pastor. He has fulfilled his duty when he has done his best to persuade the dying person to receive this Sacrament, which he stands ready to administer if the one in need of it will consent to receive it. Thus it can be affirmed that Julian has not been lacking in the discharge of his duty. He did all that he was obliged to do. Had he done more, that is, had he insisted on the administration of Extreme Unction, in all probability he would have lost the opportunity afforded him of saving a soul through the effects of Penance and Viaticum. The danger of such an alternative, which in this case was a real danger, warranted him in moderating his insistence. Moreover, the hospital authorities might have taken the stand that his action was interfering with the well-being of their patient, and likely to frustrate their efforts for her recovery. Then he would have been denied admittance to the needy soul. The responsibility, therefore, rested not with the pastor but with the sick woman. We can not say that she committed sin in refusing to receive this Sacrament. Her motives did not involve any scandal or contempt. She did receive the Sacraments necessary for her salvation. This one would have been extremely useful to her, but was in no sense necessary. So she was not obliged to receive it, certainly not under pain of mortal sin. Very many people wish to defer the reception of this Sacrament, not because they believe it will hasten their death (such belief would be sinful), but because, not being properly instructed in the knowledge of its effects, they have accustomed themselves to the opinion that its reception means that all hope of recovery must be abandoned. Of course we know

that such a state of mind is based on ignorance. This undoubtedly was the position assumed by the dying woman, and hence it is evident what little hope of success awaited Julian in his attempts to persuade her to have recourse to this Divine aid. He pursued the proper course when he followed his determination to administer Penance and Viaticum, and to await a more favorable opportunity for the renewal of his entreaties in behalf of Extreme Unction. He has no reason to be disturbed.

LXXXI. ANOINTING THE FEET

Case.—James, a workman, is seriously injured in a subway accident. He is taken to a hospital where one foot is found to be crushed and the other also injured, but not severely. His lower limbs are then put in splints and copiously bandaged. When the priest comes to administer the Sacrament of Extreme Unction he asks to have the dressings removed. Under protest the nurse removes the bandages and the patient's feet are anointed.

Question.—Was the priest right in insisting on the removal of the splints, or should he have omitted the unction of the feet?

Solution.—The Church, in harmony with the *dicta* of theologians, teaches that the five senses are to be anointed except in case of necessity. She commands, likewise, the anointing of the feet and loins, though the theologians hold that this is not necessary for the validity of the Sacrament. The reason for their position is found in the fact that while the eyes, ears, etc., are representative of particular senses, the feet and loins are not, and hence the need of placing the holy oils on these parts cannot be urged from the viewpoint of validity or invalidity of this Sacrament. But since the rubrics of the Church demand that these sections of the human body have the holy oil applied to them, the priest is not at liberty to omit the required unction unless grave reason or an admitted custom sanction the omission. Such a custom would naturally depend upon the open or tacit approval of the Bishops of the country, or of the diocese. In England, for instance, custom permits the priest to pass over the anointing of the feet of any woman who is a patient in a public hospital. In this country no such concession is granted universally, though some bishops may tolerate it

within their local jurisdiction. The one thing that could be urged in justification of the omission in question would be the impossibility of carrying out the rubrics in full, arising from physical conditions, such as an absence of the foot, or the presence of some serious risk or inconvenience to the dying person. This last condition, to our mind, is present in the case of James and it is serious enough to warrant the suspension of the rubric which demands the unction of the feet. The priest should not have called for the removal of the dressings which bound the injured feet. It was sufficient for the validity of the Sacrament to anoint the five senses. He has put himself, the nurse, and the patient, to needless trouble.

LXXXII. INVALIDITY OF ORDINATION

Case.—A few years ago there circulated in the press the sensational report that a certain man in an Italian town had received Holy Orders and had then renounced the priesthood for the reason that he had been forced into it by his parents. In order to obtain a valid decision in the matter, he instituted a canonical suit at the Curia, which had finally been referred to the Holy Congregation of the Sacraments. This Congregation, under its presiding officer, Cardinal Ferrata, was said to have decided that the ordination in this case was invalid, and that this man was free from all obligations imposed by the priesthood. It was reported that the man had subsequently been admitted to the Sacrament of Matrimony.

Question.—What is to be thought of this story?

Solution.—This piece of news created so much discussion, that, in order to obtain an authentic statement of the facts, the editor of the *Quartalschrift,* of Linz, addressed himself to an authority in Rome and elicited the following information.

Like any other Sacrament the Sacrament of Holy Orders can be administered invalidly, and whenever this has been the case, and has been positively ascertained by the proper ecclesiastical authority, the one so ordained is not considered a priest. If the reason of invalidity of such an ordination is found in the lack of the necessary matter, or form, of the Sacrament, the invalidity can usually be clearly ascertained. In such a case the proper authority, after careful examination of the case, just as clearly pronounces the invalidity, if this is called for, and, whenever possible, the matter is then adjusted by a valid ordination.

It is entirely different if an ordination is to be declared invalid

on account of a lack of the necessary intention. It is a positive fact that intention is necessary to validly receive this Sacrament, and it is also a fact that one is not a priest, and has been ordained invalidly, who, in receiving Holy Orders, explicitly and positively did not will to become a priest.

Physical compulsion to receive Holy Orders is hardly possible, but unfortunately there are rare instances in which young men are, especially by their relations, morally forced to become priests. If then one so ordained appeals to the Holy Congregation of the Sacraments, to have his ordination declared invalid, this Congregation is obliged to carefully examine the facts, and this is done with great thoroughness and *in plena Congregatione*. After careful investigation and examination the Cardinals of the Congregation are in the first place requested to vote on the question: *"An constet de nullitate ordinationis?"* Is the invalidity of the ordination certain?

This question has in no such instance been answered in the affirmative, and in all such cases the answer has been either *"negative"* or *"provisum in responsione ad secundum."* Thereupon the Congregation is required to vote on the second question: *"An constet de nullitate onerum sacerdotio,"* or *"ordinationi inhaerentium?"* Is the invalidity or nullity of the obligations incurred in Holy Orders certain in this case?

It is easily possible that in discussing the first question the probability, though not certainty, of invalidity became apparent. Such would be the case if it was found that the one ordained was so much influenced and urged in receiving Holy Orders, that the freedom necessary for assuming the heavy obligations of Holy Orders was entirely absent. In such cases it would not always follow that the ordination itself was invalid, but it would follow that the one ordained had not assumed the *onera ordinationis,* the duties of the

ordination. In such case the answer to the second question would be affirmative.

In the case referred to in the newspaper report the first question was answered with "no" and the second with "yes." The report was, therefore, false in as far as the ordination had *not* been declared invalid. The proceeding in such cases is one that contributes to the honor of the Catholic Church, as it clearly demonstrates how careful the Church values and protects, on the one hand, the holiness of the Sacrament and of the priesthood, and, on the other hand, the freedom of the individual.

LXXXIII. INVALID ORDINATION AND THE SEAL OF CONFESSION

Case.—The case here related has actually happened, though a long time ago. To Father Aurelius there came to confession a priest, whom we will call Ignotus. He mentioned a doubt about what seemed to him a substantial defect in the nature of his ordination, which Aurelius recognized as justified, and for this reason he appealed to the Sacred Penitentiary. Since an invalid ordination does not admit of sanation, as does marriage, the repetition of the ordination would be necessary. However, the Penitentiary esteemed the seal of confession so highly, and gave so much consideration to the good name of the one (be it *bona* or *mala fide*) invalidly ordained, that it required no disclosure of the defect to a bishop, not even by the penitent himself. The whole matter of the confession, at least concerning the person of the priest, should remain perfectly unknown.

Solution.—Rome's wisdom solved the case as follows: The confessor Aurelius was summoned and, in presence of no one, was consecrated a bishop at a low Mass, everything necessary having been secretly provided. Thereupon the secret Bishop Aurelius sent for the invalidly ordained Ignotus (who did not even get a glimpse of the bishop who had ordained Aurelius, and became known to no one) and ordained him at a low Mass, likewise without anyone present. The whole proceeding fell under Aurelius' seal of confession, indeed, this ordination might have taken place in confession. Immediately after this secret ordination, Aurelius was suspended entirely from the episcopacy, *ab ordine* as also *a dignitate,* and he

could no longer act as bishop, not indeed *per modum poenae* but in the form merely of a judicial act. Rome considers that either he will not be elected bishop, or not so appointed; but will see to it that, if his nomination (election) should come to Rome, there will not be a repetition of the *ordo episcopalis;* in this case he might be called to Rome "to take over the Episcopate" and, as if he had now been ordained in Rome, would return in order to be installed.

Regarding Ignotus' priestly functions thus far the following may be said: His baptisms are valid; the marriages performed by him equally so, because, if he was at least a cleric and had the lesser orders, he was *capax beneficii* (*parochiae*), for to undertake a pastorate according to the Council of Trent the *ordines minores* are sufficient, though the cleric is under obligation to receive the higher orders within the year: however, if he assisted at a marriage delegated by a pastor, according to the Council of Trent he must be a priest. A resulting invalidity of marriages may be removed without knowledge of the contracting parties. In case of necessity even the *titulus beneficii* may be validated as well as the previous enjoyment of the fruits thereof, as well as all blessings for indulgences and all other non-sacramental acts. His penitents so far have received no valid absolution from him; this defect could only be cured by God's mercy, through granting the grace of perfect contrition. It is to be hoped concerning the departed that this was so, if they have been in good faith and have done everything possible on their part. Ignotus disposed his congregation by a sermon to a sincere repentance of all the sins of their lives, and aroused in them the firm intention of going to confession in case they knew that it was necessary, and then absolved them *sub conditione* in secret. In individual confessions he disposed penitents to a general contrition; he will not require a repetition of former confessions, because his

penitents are in good faith, and he need not make known the invalid ordination. (In the same way a priest would act who for some time had absolved without jurisdiction *in casu quo Ecclesia non supplet.*) Indeed, if his faithful meantime have been to confession elsewhere with a general contrition they are already absolved.

His administering Extreme Unction was invalid, but it is not a sacrament absolutely necessary for salvation. Where scandal is not to be feared he may repeat this sacrament in the case of those gravely sick persons still living. In receiving hosts consecrated by him the faithful did not receive Holy Communion, at most they obtained the merits of a spiritual Communion; but Communion is not *"necessitate medii"* necessary to salvation.

All Masses said by Ignotus were invalid; as far as there was present in their application a duty of justice, they must be said over or reduced (condoned); moreover the Pope can supply their fruits from the spiritual treasury of the Church. The case is one of special interest, because it is an extraordinary illustration of the sanctity of the seal of Confession and of the avoidance of any odium, and it also offers an example to what extent and in what manner the official actions of individual priests, where there is lack of validity, may be validated or supplied.

LXXXIV. A MARRIAGE WITH SEVERAL OBSTACLES

Case.—Anna had during the life of her feeble husband Lewis repeatedly broken her marriage vow with the frivolous and irreligious Charles, who had even promised to marry her as soon as Lewis died. When Anna became a widow she desired to set her conscience at rest, and proposed to Charles that he either marry her, or cease all relations. Charles declined to marry her, and so she broke with him altogether. Then Anna received a favorable offer of marriage and intended to accept it. Charles, hearing of it, wanted from motives of jealousy to prevent Anna from becoming the wife of another man, and, seeking and gaining her favor again, devised a perfidious scheme. He knew that Anna from conscientious grounds would only marry in church, and he had repeatedly declared to her that for him the church ceremony appeared a mere formality and of no value; the only binding marriage for him was a civil marriage, one which, however, he was not willing to enter. Nevertheless, he consented to a church wedding. Anna, who doubted his honorable intentions, and had reason to fear that he would abandon her after the wedding and only occasionally live with her, told him and several friends that she would consent to the marriage on condition that Charles would lead the life of a married man according to the Catholic idea, and that this honorable married life should, for family reasons, begin after the approaching wedding of a daughter of Anna. Charles hesitated at first to accept the condition of married life, but finally gave his consent, even in writing. Thereupon the day was set for the ceremony. On the way to church Charles insisted that Anna

promise upon oath that the *copula* was to take place in such manner that all prospect of having children was excluded. Anna was shocked at this proposition, but saw no escape, everything being ready for the wedding, so she complied, but for fear of disappointment she renewed mentally during the ceremony her previously made condition of honorable married life. After leaving the church Charles went his way, Anna returning home alone. On rare occasions Charles visited Anna, but declared, both in writing and verbally, that he had given only a feigned consent to the marriage, in order to prevent her marrying someone else. When, six months later, Anna's daughter married, and thus the condition put by Anna and accepted by Charles, of living their married life together, was realized, Charles would not hear of it despite Anna's pleadings, and so they came to a final break. Now Anna wishes to have her marriage to Charles under the conditions named declared invalid.

Question.—Quid ad casum?

Solution.—It appears from the facts stated, that several diriment impediments exist to the marriage between Charles and Anna, but their presence must be proved to establish the invalidity of the marriage. Not less than four impediments here come into consideration. Namely (1) that of the *conditio;* (2) that of the withheld or simulated consent (*simulatio seu fictio consensus*); (3) of the condition contrary to the nature of wedlock, and, finally, (4) that of crime. If even one of these obstacles can be proved with moral certainty, then the marriage in the case is null and void.

I. The obstacle of the *conditio*. Like every other contract, that of marriage may have a condition added to it. By a condition in the strict sense we understand an addition to the contract by which its obligations are held in abeyance until the future event of the con-

dition takes place (*conditio de futuro*). Conditions of the present or of the past are conditions in the improper sense, since a marriage under such conditions either at once exists or not, according as the conditioned circumstance, although unknown to the contracting parties, either exists or does not exist. With the *conditio de futuro,* however, as long as the condition has not been fulfilled, marriage is not effected but simply remains in abeyance, for which reason the married couple have to refrain from conjugal intercourse until the fulfilling of the condition. If the condition is realized, the consent to marriage is valid and hence the marriage concluded; if, however, the condition does not materialize, then there is no marriage, and if the parties nevertheless wish to keep their union in existence, they must make a new marriage contract. Under a condition *de futuro* the contracting parties must arrange for the realization of the condition, must at least not impede its fulfilment. Should, however, one of the parties before the fulfilling of the condition enter unconditionally into a second marriage, then, on account of the obligation of waiting for the entrance of the condition, this marriage would be unlawful, yet at once valid, as the first conditional marriage is no marriage before the fulfilment of the condition. On this matter Gasparri (*De Matrimonio,* 3, *cap.* IV, *parte* II, *n.* 987 *seq.*) says briefly and plainly: *Conditio de eventu futuro contingenti suspendit consensum usque ad verificationem eventus. . . . Igitur matrimonium sub tali conditione contractum interim non valet et est veluti in suspenso, cum consensus alligatus illi conditioni nondum habeatur et in suspenso sit. Utraque pars tenetur curare verificationem conditionis aut certe eam non impedire. . . . Matrimonium, conditione quacumque de causa non verificata, evanescit ex defectu consensus, uti patet; verificata autem valet a momento verificationis et tunc fit sacramentum, licet*

deinde fictione juris retrotrahatur ad momentum celebrationis. It is to be remarked that after fulfilment of the condition, as most Canonists teach, a renewal of the consent, either privately or before the pastor and two witnesses, is not necessary.

In this case, Anna had added to her marriage contract with Charles the lawful and possible condition: "I take you as my husband if after the wedding of my daughter you will begin to live with me in honorable wedlock." Charles consented to this condition. The marriage contracted under this condition is invalid if with moral certainty three things can be proved; namely: (1) That Anna before the marriage really imposed the condition *actualiter*. (2) That she never renounced *actualiter* the condition imposed, that therefore the condition at the moment of marrying continued *virtualiter* (a merely habitual condition would not suffice), and, (3) that the condition was not fulfilled. As is apparent from the *facti species* Anna is decidedly in a position to produce the threefold proof. For she published before the wedding the condition not only to her fiancé Charles, but also to some friends, who can testify to this fact. She never renounced the condition imposed, but renewed the same mentally during the ceremony. The condition, as already stated, was not kept. Hence the marriage may be regarded in the given case as null and void. It does not alter the case that before the fulfilment of the condition, sexual intercourse was voluntarily had between Charles and Anna. True, the law holds that the performance of the *copula carnalis* means relinquishment of the condition. Wernz teaches even positively: *"Qui ante conditionem de futuro impletam matrimonium per copulam libere admissam consummat, conditioni eo ipso renuntiasse praesumitur praesumptione juris et jure."* The same view is held by other weighty Canonists, such as Gasparri, Kutschker, Scherer,

Aichner, and others. This presumption, however, was abolished by a decree of Leo XIII. "*Consensus mutuus,*" of February 15, 1892. Whether the abolition of this presumption may be extended to a condition *de futuro* of a contracted marriage, is not positively agreed upon by the Canonists, but several of them reply affirmatively to the question. Thus D'Annibale, with regard to the decree mentioned, declares: "*Quamdiu ignoratur, utrum (conditio de futuro) exstet vel exstiterit nefas est consummare matrimonium, nisi sponsi a conditione recedant. Quod si interim commisceant, hodie non amplius praesumuntur a conditione recedere et pure contrahere, etiam ubi Tridentinum non viget.*" The same is taught by Ballerini-Palmieri. That the presumption in question permits of a contrary proof is assumed by Leitner, who says "Sexual intercourse practised prior to the fulfilment of a condition between two persons, who gave a conditional consent to marriage, implies renouncement of the condition, unless the will to the contrary is positively present." Similarly other authorities.

In fact, it is not clear why the *copula carnalis* should in itself be a renouncement of the imposed condition. Couples may practice unlawful sexual intercourse without intending or wishing to renounce the condition imposed. Cohabitation of itself is not to be regarded as relinquishment of the condition. We cannot assert, for instance, that the *copula carnalis* implies renouncement of the condition when this renouncement is expressly excluded. And again, if a doubt exists as to the intention with which the *copula* was practised, then the continuance of the condition must be presumed, if its revocation can not be proved. For in such case must be applied the rule in law: "*In dubio melior est conditio possidentis.*" The condition, however, is in possession as long as renouncement of the same is not established. If, therefore, Anna can prove that

she did not intend to renounce the condition by permitting the *copula,* but persevered in the same, then her marriage to Charles is invalid because of non-fulfilment of the condition. We may even suppose that Anna, far from wishing to renounce the condition, permitted the *copula* in order to move Charles to the fulfilment of the condition. Finally, it is also to be observed that the *copula carnalis,* in order to imply renouncement of the condition, must be practised *more et affectu conjugali;* however, this is not to be assumed in the foregoing case, because Charles, as we shall proceed to show, probably added a condition contrary to the nature of matrimony. That, moreover, Anna did not renounce the condition is best seen in the fact that she continued to insist upon its fulfilment, and at last, upon the day when the condition was to be complied with, namely on her daughter's wedding-day, broke completely with Charles and since then had no further sexual intercourse with him. There is hardly any doubt, therefore, that Anna's marriage to Charles, because of the non-fulfilment of the imposed and accepted condition is null and void.*

II. The second impediment to be taken into consideration in the case is the withheld or simulated consent (*simulatio sive fictio consensus*). This exists if one or both of the parties conform to the exterior forms of contracting marriage, but inwardly have no thought of entering upon a true marriage, or indeed exclude all such intention. That a feigned consent can never produce a real marriage, is evident. Of course the lack of consent is difficult to prove in the external forum, but such proof is by no means impossible. This proof of *simulatio* and *fictio* may be shown

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*In a quite similar case the Roman Rota decided some time ago for the invalidity of a marriage, a fresh proof that the consummation of marriage before the fulfilment of a condition does not imply renouncement of the same.

from the cause of the simulation, also from the circumstances which preceded the marriage, followed it, or accompanied it. Now we know from the facts of the case that Charles, an irreligious man, detested any kind of marriage, particularly a church marriage, which he regarded as an empty ceremony and not binding, and only married the Catholic Anna in church to make impossible her union with another man. We may conclude, therefore, that Charles misused the church marriage, to an extent at least, as a means for his concupiscence. As a matter of fact Charles abandoned Anna right after the ceremony, thereafter occasionally visiting her to gratify his passion. Charles' hypocritical and deceitful intentions cannot be denied, and therefore, when in addition Charles declared in writing and verbally that he never intended a real marriage according to Catholic ideas, the proof of his feigned consent and therewith the invalidity of the marriage is well established.

III. In the third place there comes into consideration in our case the impediment of the condition against the nature of marriage. When on the way to church Anna was made to promise Charles that the *copula* take place in such manner as to prevent child-bearing, this was a condition *contra bonum prolis.* The fact of this condition is admitted by both parties and therewith the marriage is rendered invalid in the inner forum. For its invalidity in the external forum the condition imposed must be proved with moral certitude. For this are required *argumenta, quae prudentem virum, attentis circumstantiis occurrentibus, certum reddere valent.* It is accepted generally that an admission made by the parties to the marriage at the investigation, or even earlier, after consummation of the marriage, is not admissible as proof against the validity of the marriage. But certainly there may exist exceptions

to this rule. Such an exception could exist, if the understanding was made under circumstances that exclude all suspicion of untruth. This appears to be the fact in our case. Charles despised Catholic marriage; for him the only valid bond was a civil marriage, and this he refused to enter. He cared nothing about the invalidity of the church marriage. From these circumstances we may conclude that a condition against the natural aim of matrimony was imposed, namely against the *bonum prolis.* Nevertheless the facts of the case as presented do not offer proof of this condition with moral certitude.

IV. There remains now the fourth impediment, namely the impediment of crime *ex adulterio et promissione matrimonii,* to be briefly considered. It is evident in our case that there was a complete material and formal adultery. Anna during the life of her lawful husband had *copula carnalis perfecta* with Charles. Both parties considered the intercourse adulterous. To the adultery was added on Charles' part the promise of future marriage; but whether this promise was seriously intended is very doubtful with a man of Charles' views. Therefore it may have been only a resolution or wish, which does not suffice for the existence of the *impedimentum criminis.* And even if a serious promise of marriage was made by Charles, it is not plain whether Anna accepted the promise. Hence it is not certain whether in the given case the *impedimentum criminis* exists. In the case before us the marriage is invalid because of the added, but unfulfilled condition, and because of the feigned consent. For the existence of the two other obstacles (*pactio contra substantiam matrimonii,* and *impedimentum criminis*) proof cannot be furnished.

LXXXV. MARRIAGE CONTRACTED CONDITIONALLY

Case.—Claudius and Bertha wish to marry, but fear to undertake the burden of rearing a family. They marry, therefore, with the private understanding that they shall have no children for at least five years, and that the number of their children thereafter shall not exceed three.

Question.—It is asked whether this marriage was valid.

Solution.—A contract to which an immoral condition is attached is by the law of nature invalid, at least as long as the condition has not been fulfilled, if the condition have reference to the future, since no one can oblige himself to sin. In the case of the marriage contract it is not lawful for the parties to attach to their consent any condition—especially any that regards the future, unless there be most urgent reason for such action; a condition, however, that is possible and not opposed to good morals, does not as such render the marriage contract invalid. Such a conditional consent would be an agreement whereby the parties would transfer to each other the conjugal rights under the proviso that they would never exercise these rights. If some theologians regard such a marriage as invalid, this is only because they hold that the promise to practice continency is inconsistent with the right to conjugal intercourse, and consequently opposed to the nature of marriage.

In the case of Claudius and Bertha, therefore, if their agreement bound them to abstain from the use of marriage before and after a certain time and nothing more, such agreement did not invalidate their marriage, unless one prefers the opinion that an engagement to practice continency, perpetual or temporary, is a

denial of the rights to perpetual conjugal intercourse. But the condition by which the couple qualified their consent seems to have been of a very different nature. As the purpose of their prenuptial agreement was to evade the consequences of the marriage act rather than to practice continency, it may be assumed that they intended to limit the number of their children by unlawful means. Such a stipulation is plainly repugnant to good morals, and, therefore, by reason of the principle stated in the beginning it would seem that the marriage of Claudius and Bertha should be invalid. But the positive law has provided that for the marriage contract only those immoral conditions are nullifying which are opposed to the substance of matrimony. *"Si conditiones contra substantiam matrimonii inseratur, puta si alter dicat alteri: contraho tecum, si generationem prolis evites, vel donec inveniam aliam honore vel facultatibus ditiorem, aut si pro quaestu adulterandam te tradas: matrimonii contractus, quantumcumque sit favorabilis, caret effectu. Licet aliae conditiones appositae in matrimonio, si turpes aut impossibiles fuerint, debeant propter ejus favorem pro non adjectis haberi"* (Decretals iv, tit. 5, 7). A condition that positively and expressly excludes an essential obligation of matrimony, whether intended by one or by both parties, renders the marriage of no effect; for without its substantial obligations matrimony cannot even be conceived.

In the agreement of Claudius and Bertha the condition is not merely sinful, it is opposed to the procreation of children. But the substance of marriage, as the words quoted declare, includes the generation of children (*bonum prolis*), indissolubility (*bonum sacramenti*), and conjugal fidelity (*bonum fidei*).

But here we must distinguish between the rights of marriage and their use, between the duties of marriage and their exercise.

According to St. Thomas (4 *Sent. d.* 31. *q.* 1. *a.* 3.) the essence of marriage does not depend on its use or on the fulfilment of its obligations, but on the intention to acquire the rights and to assume the obligations of the married state. This is the common and certain opinion. Now as Claudius and Bertha are not ignorant of the nature and duties of marriage and as they "wish to marry," their agreement excludes not the *right* to, but the *exercise* of the lawful use of marriage, not the matrimonial *obligation,* but its *fulfillment.* Hence it appears that their marriage was valid. Of course if the parties had intended the pre-nuptial agreement as a *conditio sine qua non* of their marriage consent and if they had wished to exclude the rights and obligations that are inherent to the marriage contract, the ceremony they took part in would not have been a true marriage *defectu consensus.* Their consent would have depended on a condition that was immoral and opposed to the nature of marriage.

As a general rule marriages contracted with the understanding that the parties are to practice birth control, although sinful because of the intended abuse of marriage, are not thereby rendered invalid. The intention to become man and wife usually outweighs any opposing intention. *"Si conditio apponitur contra bonum prolis e. g. dummodo generationem prolis vitemus donec ditiores evaserimus—dummodo post unum vel alterum filium prolem excludamus; conjugum intentio exploranda est: si intendunt jus ad legitimum usum matrimonii excludere, contractus est invalidus, quia non concedunt jus perpetuum in proprium corpus in ordine ad generationem, quod tamen ad essentiam matrimonii essentiale est; si vero, ut plerumque fit, praevaleat intentio illud jus tradendi, cum secundaria intentione matrimonio abutendi, contractus valet"* (Tanquerey, *Syn. Theol. Moral.,* I, p. 427).

LXXXVI. MISCONDUCT BEFORE MARRIAGE

Case.—In our diocese the rule is established to have marriages celebrated with nuptial Mass. A certain pastor is troubled at the frequency of pre-nuptial misconduct and consequent scandals in his parish, and is exercised about stopping them; so he decides upon having no nuptial Mass in future if any such misconduct has preceded the proposed marriage. He announces this publicly in church, and adds that a written assurance must be given him that no misconduct has taken place (meaning, of course, fornication) between the parties wishing to be married; otherwise there will be no nuptial Mass, and everyone will then understand (he adds) the reason why. The nuptial Mass is, of course, very much prized in the parish, and the non-celebration of it at any marriage would be looked upon as a degradation. The pastor finds this his last resource in the matter and holds that the end justifies this means.

Solution.—The principle that the end justifies the means is a pernicious one, when the means are evil, unjust, etc. In the present case we cannot see any justification for the use of the means employed. It is the wish of the Church that all her children receiving the Sacrament of Matrimony should have a nuptial Mass. She desires that they be encouraged, not discouraged, in so holy a practice. In these days when worldliness is on the increase and our young people show a tendency to follow the fashions of a worldly society, it is all the more imperative upon the clergy to insist upon a nuptial Mass, and not to make it more difficult or even impossible for the people to obtain this special blessing of God upon their marriage. The action of the pastor in question does make it more difficult for all, and impossible for some, to submit to the wishes of the Church in this respect. Moreover,

such a decree will tend to create a habit of marrying without a nuptial Mass, which sooner or later will spring into a deep-rooted custom. When his people see many such marriages celebrated, they will lose their desire for nuptial Masses and content themselves with the simpler and less expensive ceremony. The fact that sin has been committed can never deprive a couple of the *right* that is theirs of receiving the nuptial blessing. They can confess their sins and receive absolution and thus receive the Sacrament of Matrimony in the state of grace. Surely no one in the state of grace should be driven away from the special blessings of God; and who stand more in need of these blessings than those who, through weakness, have fallen into pre-matrimonial sin? Their difficulties in married life are usually greater, and hence they have more need of God's blessing. Again, we must not forget that their sin is a secret one, which does not necessarily cost them their reputation. They have a strict right to that reputation, and no one, not even their pastor, is justified in ruining that reputation. But this is the inevitable result of the pastor's attitude. His action proclaims their sin and the ultimate consequence of this is scandal to the parishioners, and a hatred of the Church and of her laws is engendered in the hearts of those who are refused the nuptial Mass. The day would soon come when his people would seek marriage outside the church, if possible. The Church obliges us to confess our sins *privately;* this pastor obliges his people to confess *publicly*. Moreover, innocent people are compelled to make a statement that must be most humiliating, and that in their case serves no purpose whatever. Sinners are driven to make lying statements to save their reputation. Dissatisfaction and more intolerable evils can only come from this practice. We hold that the attitude of the pastor is unjustifiable.

LXXXVII. BREACH OF FAITH REGARDING THE EDUCATION OF CHILDREN IN A MIXED MARRIAGE

Case.—Fabius, a Protestant, weds the Catholic Anna, and promises that he will let all their children be brought up as Catholics. Upon the birth of the first child, however, he withdraws his promise, causes the infant to be christened by a Protestant minister and to be enrolled in the Protestant church register. Anna vainly opposes this breach of faith, and resolves to deny Fabius his conjugal rights until he makes good his breach of faith. When she seeks advice in confession, one confessor declares her resolve to be unlawful, another says that it is valid, and indeed her duty.

Question.—Which confessor is right?

Solution.—We have to deal here with a resolution which aims at a dissolution of the conjugal union, not in the fullest sense but yet in an essential point. It is true that, though the Catholic Church does not recognize a divorce, or the severing of the bond between baptized persons after a validly consummated marriage, she does permit a separation from conjugal association for important reasons, and, according to the nature and gravity of the reason, she permits a permanent or temporary separation. Grounds for a *permanent* separation, which excludes the resumption of conjugal association even after the removal of the grounds for separation, are adultery by the other party, or that party's falling into heresy after the marriage, if such is ascertained by an ecclesiastical court. The ecclesiastical law recognizes as grounds for a *temporary* separation, *i. e.*, for the period that the grounds continue to exist: Ill-treatment,

peril of life, danger of infection, danger of seduction, or the near occasions of sin, and similar causes. (Compare St. Alphonsus I. 6 *n.* 970.; Wernz, *Jus decretal,* Vol. IV., 712.; Lehmkuhl, *Theol. Mor.* II., 934.)

In Anna's case we have plainly none of the mentioned grounds. For this reason, no doubt, the one confessor declared Anna's resolve to be unlawful. But there may be a ground of equal, or nearly equal, weight in Anna's case. If this be the fact, then Anna's resolve may be considered valid, all the more so as here there is question not of a complete but only of a partial, temporary, suspension of the conjugal union. And as it is not a matter of a public separation, therefore everything may be settled in the realm of conscience, according to established probable opinion.

Is there actually present for Anna a ground similar to the recognized ecclesiastical reasons for a separation? As the last canonical ground is mentioned above: "Danger of temptation, or near occasion of sin." For Anna personally, as we glean from the case, this danger is not present; but for the children of this marriage, whom Anna must consider as her other *ego,* there is great danger at hand: from the very start they are to be snatched from Christ's Kingdom and led into a false religion. One of the reasons recognized by the Church, therefore, is not absent in Anna's case.

We must also consider the reason which, in a marriage contracted by infidels, allows to the party becoming converted and baptized, not merely a partial suspension of the conjugal union but separation. The reason is thus stated: *si infidelis non vult cohabitare nisi cum contumelia Creatoris.* This *contumelia Creatoris* must be understood as the inciting of the converted spouse to apostasy, or to grievous sin. Such *contumelia Creatoris* is evidently present when the prospective children are to be withdrawn, from the very

beginning, from the true worship of God, and hence to be deprived of their Lord and Creator. In our case Fabius intends to compel Anna to this *contumelia Creatoris.*

This fact will become much plainer to us if we call to mind the purpose of Christian marriage, and Anna did enter a Christian marriage with Fabius. The aim of Christian marriage includes the natural purpose of marriage, namely the propagation and increase of the human family, but it ennobles this aim and strives really for the propagation and increase of the Kingdom of God amongst men; it aims at peopling the earth with new beings directly destined to belong to the Kingdom of God on earth; this Kingdom of God, however, is only the Catholic Church. This purpose of the marriage between Fabius and Anna, which Fabius first solemnly desired and promised, he intends now to nullify. Anna need not make herself a party to such frustration of purpose, and may consequently deny the conjugal intercourse that would lead to it. We may easily understand now, why the second confessor was of opinion that Anna is obliged to refrain from intercourse with Fabius, and that her refusal was a matter of duty. This conclusion, however, as we shall presently show, goes too far; but that the refusal on Anna's part is in and of itself lawful, appears from our deductions as more than probable.

A further confirmation of this view is found in the general principle which as the 75. *regula juris* was by Boniface VIII. incorporated in *Canon Law,* according to the *liber sextus Decretalium.* The principle is stated as *"Frustra sibi fidem quis postulat ab eo servari, cui fidem a se praestitam servare recusat."* This is a sharp light on our case, in Anna's favor. Fabius has committed a breach of faith with Anna, he refuses to keep his solemnly given word and to carry out the serious obligation undertaken before God;

hence it is vain for him to require Anna to keep faith in her marital duty; by persisting in his breach of faith he releases Anna from her duty.

There is still to be said, anent this case, that it would be going too far to oblige Anna to refuse her husband the marital right, unless by such temporary denial Fabius would be moved to keep his promise. As a matter of fact, however, a refusal of this nature too often widens the breach between a married couple, it engenders disputes and quarrels, and might become the cause of exposing to many temptations not only the husband (through his own fault), but even the wife. We may gather from this that a refusal on the wife's part is not only not an obligation, but is not even advisable, unless the *debitum conjugale* is under the circumstances something *intrinsecus malum.* But this is not the case. If from the act itself there would result the frustration of the aim of marriage, then certainly the act would be unlawful. But in our case there results from the act not even the frustration of the supernatural or Christian aim of marriage; this is brought about only *extrinsecus,* through the continued malice of Fabius, but can possibly be defeated through Anna's vigilance, and later by the voluntary choice of the children themselves; therefore the granting of the *debitum conjugale* remains for Anna as something in itself lawful. The natural purpose of marriage remains intact, and the secondary purpose of marriage, the *remedium concupiscentiae,* is not to be disregarded.

From the above it may be gathered that the first confessor judged Anna too severely in the question *quid liceat,* while the other confessor was also too severe and disregarded *quid expediat.*

LXXXVIII. QUESTIONS REGARDING MIXED MARRIAGES

Case.—Bertha, a Catholic young lady, asks Paul, her pastor, to obtain the necessary dispensation in order that she may marry Ezekias, a Methodist. At the same time she informs Paul that Ezekias refuses to make any promises in regard to the future Catholic Baptism and training of the children that may be born after the marriage. Paul declares that it will be useless to apply to the bishop for a dispensation, unless Ezekias consents to make the pre-nuptial promises, which are always required of non-Catholics who desire to marry Catholics. Ezekias refuses to make the promises; then he and Bertha contract a civil marriage before a magistrate on May 2, 1912. Two months later Bertha repented, and anxious to have her marriage legalized in the eyes of the Church, applies to Paul for relief, stating that Ezekias refuses either to appear before the priest for a marriage ceremony, or to make any promises. Paul applies to the bishop for a *sanatio in radice.*

Questions:

1. Is it always necessary to require the pre-nuptial promises in cases of mixed marriages?
2. May the bishops in the United States in any circumstances allow a priest to officiate at a mixed marriage when the non-Catholic party obstinately refuses to make the pre-nuptial promises?
3. What is meant by the material presence of a pastor at a mixed marriage under certain circumstances?
4. Did Paul the pastor act prudently in the case as proposed?
5. Could a bishop in the United States give a *Sanatio in radice* in the case as proposed?

Solution:

1. It is necessary always in cases of mixed marriage to require

the pre-nuptial promises (*cautiones*) by which the non-Catholic party agrees to the religious liberty of the Catholic spouse and the Catholic education of their children. This is required not only by ecclesiastical legislation but also by the natural and divine law. *"Cum enim non ecclesiastica solum sed naturalis ac divina prorsus lex vetet, ne homo in nuptiis contrahendis se aut futuram sobolem periculo perversionis temere committat; exinde sane manifestum est memoratas cautiones idcirco ad hiberi, ut naturalis eadem divinaque lex sarta tectaque habeatur"* (Pius VIII, to Archbishop of Cologne, Mar. 27, 1830). Ecclesiastical legislation may and should require that those promises be made in writing and signed by the parties promising.

2. In a letter of Gregory XVI. to the bishops of Hungary (April 30, 1841) it was declared that in cases of mixed marriage when the *cautiones* are obstinately refused and the marriage cannot be prevented without danger of greater evil and scandal and detriment to religion, and it is deemed better for the good of the Church and the common welfare that the marriage should take place before the priest rather than before a heretical minister, *"tunc parochus catholicus aliusve sacerdos ejus vices gereus poterit iisdem nuptiis materiali tantum praesentia, excluso quovis ecclesiastico ritu adesse."* The bishops of the United States have not requested a concession such as was made to the bishops of Hungary, and the Holy See has not made such a concession for our country. It cannot be said, then, that our bishops have the right to judge whether they can allow the *assistentia passiva,* as Rome seems to reserve the judgment to its own tribunal in all doubtful cases of this particular kind. A decree of the Holy Office of August 5, 1916, declares that passive assistance of pastors at mixed marriages can be tolerated only in the places for which concessions were made before the

"Ne Temere." Hence marriages contracted in such manner elsewhere are according to this decree not only illicit, but also invalid. The same Sacred Congregation decided Dec. 22, 1916, that when the non-Catholic party is willing to wed before the parish priest but refuses to make the customary promises in favor of the Catholic religion, validation must be obtained through a *sanatio in radice* rather than through a dispensation with renewal of consent in the passive presence of the parish priest. Cf., however, what is said under No. 5.

3. By material or passive assistance it is meant that the priest assists merely as a witness, gives no sign of approval and performs no ecclesiastical rite. Hence the sacred vestments should not be used, the words *"Ego vos conjungo,* etc." should not be pronounced, the blessings of the ring, prayers, Mass and nuptial blessing should be omitted.

Whether the asking and receiving of consent would constitute formal or active assistance on the part of the priest is not certain. The Holy Office declared June 21, 1912, that in case of mixed marriage when the *cautiones* are obstinately refused, the prescription of the *"Ne Temere"* requiring for validity that the expression of consent be asked and received no longer holds. From this it seems most probable that such action on the part of the priest would be more than material or passive assistance. Nevertheless there seems to be some reason for holding that, since the persons to be married make the contract (the priest not being the minister), to ask: "Wilt thou take, etc?" would be nothing more than saying: "You wish to be married; then join hands and say these words: 'I, N., take, etc.'" Certainly the presence would be merely material if the priest omitting the "Wilt thou take, etc?" began by telling the couple to

join hands and say: "I, N., take thee, etc." and continued as directed in the *"modus assistendi matrimoniis mixtis,"* as in the Baltimore Ritual. Whether the priest asked the parties to repeat the words after him, or made them read from a book, would not be important, as in either case his assistance would be merely material.

4. Paul acted imprudently if he did not refer the case to the bishop. If he thought that the marriage could not be prevented, his duty was: 1st, to try to obtain the promises; 2nd, in case of refusal, to lay the matter before the bishop. In countries where instructions have been given, it is decided that the bishops may allow the priest to assist *materialiter.*

5. The former faculties of the bishops did not comprehend this new impediment of the forum of marriage. Canon 1139 of the new *Codex* provides that marriages can be sanated *in radice,* even when the requisite form has not been observed. It does not grant this faculty to bishops, however, but simply states that such marriages can be made legitimate. Hence the faculty has to be applied for. Some bishops in the United States, *e. g.,* Cardinal Farley of New York, have the faculty to grant a *sanatio in radice* for a marriage attempted, *cum impedimento mixtae religionis vel disparitatis cultus,* before a magistrate or a non-Catholic minister. Such sanation may be granted *inscia parte acatholica,* if it be impossible to get a renewal of the consent with the *cautiones.* There is good authority for holding, likewise, that a bishop who does not possess these or similar faculties may act, nevertheless, as though he did, if there be grave necessity of such action, *e. g.,* if prompt recourse to the Holy See is impossible and the case cannot suffer such delay without causing great harm. Canon 81 of the new Code reads: *"A generalibus Ecclesiae legibus Ordinarii infra Romanum Pontificem dispensare nequeunt, ne in casu quidem peculiari, nisi haec potestas eisdem*

fuerit explicite vel implicite concessa, aut nisi difficilis sit recursus ad S. Sedem et simul in mora sit periculum gravis damni, et de dispensatione agitur quae a Sede Apostolica concedi solet." However the decree of Dec. 27, 1916, mentioned above states that a bishop, nowithstanding his faculty of *sanatio in radice,* cannot make use of it in case the non-Catholic party is willing to appear before the priest, but is entirely unwilling to make the promises.

LXXXIX. ERROR AND MATRIMONIAL CONSENT

Case.—From Paul, pastor, Cecilia asks advice in regard to her marriage with John, the father of her three children. She makes the following statement of the case: Cecilia has been always a Catholic. John, once a Lutheran, was received into the Catholic Church November 25th, 1905, by a priest who administered conditional baptism. In the month of August, 1906, Cecilia and John were united in marriage by a civil magistrate, and to the union there were born three children who have not been baptized. Cecilia feared to go to a priest because John had two previous matrimonial experiences. In the first case, March 10th, 1900, he went through the outward ceremony of a marriage with Anna before a squire, because the father and brother of Anna, a baptized Lutheran, who was soon to be a mother, threatened to shoot him if he did not marry the girl. John declares on oath that before the ceremony he made known to three friends, still alive, that he had no intention of contracting a real marriage. After the ceremony, such as it was, he departed and has not since that time seen Anna, who obtained a divorce on the ground of desertion, and is now living with a husband in California.

Again, on June 10th, 1903, he was married by a Lutheran minister to Letitia, also a Lutheran. John affirms that among Lutherans there was a "general understanding" that married people could be divorced for Scriptural reasons. Letitia was unfaithful. John obtained a divorce in the civil courts. Cecilia accepted the story in all details and married John as stated above, but feared to approach a priest. She and John now wish to receive the Sacrament and to have their children baptized and instructed by her pastor.

Paul, convinced that the two former marriages were invalid, tells Cecilia that all will be well as soon as he can receive authorization to absolve from the sin committed by contracting marriage before a civil magistrate, the sin being reserved to the Bishop in Paul's diocese, in which also the marriage was contracted.

The chancellor of the diocese warns John that there can be no further proceedings until an examination has been made of the two former marriages.

Questions:

1. Did Paul act prudently in making his statement to Cecilia?
2. Is the sin of contracting or attempting to contract marriage, outside the Church, universally reserved to the Bishop?
3. When and under what circumstances does fear of a grave detriment invalidate the matrimonial contract?
4. What is to be held in regard to marriages contracted with some kind of "understanding" that divorce can be granted for "scriptural" or "statutory" reasons?
5. Will the Church sanction the marriage of John and Cecilia?
6. Should not Paul have said to Cecilia, at once and without hesitation: You cannot receive the Sacrament, and I will not baptize your children unless you cease to live with John, your reputed husband?

Solution:

1. Certainly Paul acted imprudently. Apart from the general rule that no priest should lightly and hurriedly decide serious cases of conscience, the case proposed to Paul called not only for serious consideration, but was one which clearly should have been brought to the attention of the Bishop of the diocese to be examined and decided by him, or by a judge appointed by him in union with the curia for matrimonial cases and in conformity with rules laid

down by the "Instructio de Judiciis Ecclesiasticis circa causas Matrimoniales," printed in the appendix (p. 262) to the Acta et Decreta Conc. Plen. Baltimore, III.

Even when a diocesan Curia Matrimonialis declares a marriage invalid, the Defensor Vinculi must appeal to another curia (Metropolitan). If both decisions are against the validity, the Defensor Vinculi may appeal to the Holy See, and either one of the contracting parties may appeal to the Holy See—which they were free to do from the beginning, if they wished. It is never allowable to contract a new marriage until two decisions have been given against the validity of former ceremonies. (See Instruct. sup. cit., especially par. 25 and par. 30.)

2. a. There is no general decree reserving in all parts of the United States absolution from the sin of contracting or attempting to contract marriage before a civil magistrate, but some bishops make this reservation in their dioceses.

b. By decree of the Third Plenary Council of Baltimore (n.n. 124, 128), the following sins with excommunication are reserved to the ordinary:

(I) Attempt to marry after having received a civil divorce.

(II) Contracting marriage or attempting to contract marriage before a non-Catholic minister.

3. If the law of nature alone be considered, acts done under fear can be voluntary, *i. e.,* they can be done with deliberation. Unless the evil impending or threatened be so great as to deprive one of the use of reason, his acts under fear are voluntary *simpliciter* (*i. e.,* he really makes up his mind to do the act) and involuntary *secundum quid* (*i. e.,* under the circumstances he might not do the act).

To protect the freedom of a marriage contract, the Church by

positive legislation decrees that marriage contracts made under fear of serious detriment shall be held for null and void.

Canonists and theologians unanimously hold that grave fear is a diriment impediment to matrimony when the following conditions are found:

"Ut incutiatur (1) a causa externa et libera; (2) injuste; (3) ad finem contrahendi matrimonium." (Sabetti-Barrett, de matrim. n. 905.)

In regard to John's first venture:

a. The marriage most probably was invalid *ratione metus*, for the evil threatened was unjust. The father and brother of the wronged girl could have had recourse to the processes of the law; but had not the right to threaten to shoot John, if he refused to marry the girl.

b. Apart from the question of threats made, if John really did not give consent, certainly there was no marriage. The testimony of disinterested and reliable witnesses would be accepted in ecclesiastical courts. But Paul, the pastor, could not proceed upon the assumption that this marriage was invalid. His duty was to refer this case to the bishop. "Conjuges in causis matrimonialibus subsunt episcopo in cujus diocesi maritus domicilium habet." (Instruct. sup. cit. par. 2.)

4. a. The answer to the fourth question is found in the decision given by the Roman Rota in the famous Castellane-Gould case. The decision was given February 8, 1915. It was published in the Acta Apostolicae Sedis of June 21, 1915. (Ann. VII, Vol. n. 11.) The practical consequences of this important decision, especially in regard to the marriage of non-Catholics, are drawn out in an article: "Are non-Catholic marriages valid?" published in the November, 1915, number of the *American Ecclesiastical Review*.

The principle on which is based the Rota decision for the validity of the Castellane-Gould marriage is the following: An error (false opinion) about the dissolubility or indissolubility of marriage does not invalidate the marriage contract, unless there be an explicit and absolute act of the will making this error and condition a part of the contract. "Conditio contra substantiam matrimonii debet in pactum deduci" is the expression generally used by canonists and theologians treating this question.

"Error circa indissolubilitatem conjugii menti suae inhaerens et dans locum contractui . . . non irritat matrimonium." (Acta Apos. Sedis sup. cit. p. 304.)

"Ut matrimonium sit invalidum, requiritur voluntas explicita qua contrahens simpliciter et absolute vinculi perpetui exclusionem intendit." (Ibid. p. 309.) Nothing will supply for the defect of consent; but the Rota declared that in the Castellane-Gould case Miss Gould had two intentions: 1st, to contract marriage; 2nd, to contract a marriage that could be dissolved by divorce. In such cases it is not easy to determine whether the marriage is valid or invalid. "Res ardua est dubium dirimere." (Ibid. p. 295.) "Nam duae erant voluntates contrariae, generalis, nempe contrahendi matrimonium prout ab Auctore naturae vel a Christo institutum est, perpetuum scilicet et indissolubile: et alia particularis, qua intenditur vinculum ob adulterium vel alias causas dissolubile" (ibid.). To solve the doubt, the Rota says, it is necessary to apply some rule by which we can determine which intention prevailed, and it adopted the rule laid down by Benedict XIV.: "Prevalet in casu voluntas particularis si expresse apposita fuerit conditio de matrimonio ob adulterium solvendo: sin aliter, praevalet voluntas generalis qua intenditur indissolubile vinculum, in qua absorptus manet privatus contrahentis error." (Ibid.)

Hence: "The Church holds marriage among Hebrews, infidels, Greeks, Calvinists to be valid, unless the explicit condition of its solubility was made." (Gasparri. See *Amer. Eccl. Review,* Nov., 1915, p. 582.) "The marriage of infidels, heretics and schismatics are valid, unless the contracting parties positively intend otherwise and outwardly manifest that they will contract none but a soluble marriage." (Wernz cited ibid.)

b. Applying this principle to the case of John and Letitia, we must conclude that, granting that the marriage with Anna was invalid, this second marriage was valid, unless it can be proved that one was baptized and the other unbaptized, or that there was another invalidating impediment.

The "general understanding" would not invalidate the marriage unless an explicit agreement that divorce might be obtained was made a part of the contract (in pactum deducta).

5. John and Cecilia cannot obtain the sanction of the Church for their marriage if Letitia is still alive. Had there been no marriage ceremony but the first (with Anna, under threat of death) the Curia Matrimonialis might have given a declaration of nullity.

6. Paul should proceed very cautiously in giving advice to Cecilia: (I) For the baptism of the children all that is required is a reasonable guarantee that they will be brought up as Catholics. (II) In determining what should be said in regard to the separation of John and Cecilia, many things must be considered: a. Are they in good faith or in bad faith? b. Will an admonition from the pastor produce good results? c. Are John and Cecilia in such good dispositions and of such good character that one could rely on their promises to live together as brother and sister? d. Would there be scandal if they continued to live together, being known as man and wife? Paul should pray and seek counsel.

XC. MARRIAGE CONTRACTED THROUGH FEAR

Case.—Titus, a young man of respectable family, falls in love with Sempronia, a woman of evil life. His parents threaten ejection from the family and disinheritance unless he abandon the liaison; at the same time they promise to make him heir to the greater part of their fortune, if he will agree to marry Gertrude and lead a more settled life. Titus thereupon pays suit to Gertrude, and after six months they are married. But his love for Sempronia had not waned, and even during the marriage ceremony the thought of separation from her caused him great mental anguish. After one year of married life Titus abandons wife and child to resume his former intimacy with Sempronia. To the remonstrances of his wife and parents he answers that his consent to marry Gertrude was extorted through fear and had therefore no binding force.

Question.—Is Titus' contention correct?

Solution.—Since marriage is a contract and depends on the consent of the contracting parties, whatever takes away the freedom of consent is an obstacle to marriage. Hence undue influence brought to bear upon the parties in order to extort their consent nullifies the marriage. This results from the natural law when the stress of fear is so strong that it dethrones the reason. In other cases, when the fear is not so extreme, the consent must be deemed absolutely voluntary, *i. e.,* the will chooses what appears the lesser evil; yet at the same time is the consent partially involuntary, inasmuch as it is given with more or less repugnance. The positive law regards contract made under such stress of fear as voidable; but since this cannot be applied to marriage, the Church has made fear a diriment impediment, *i. e.,* one that renders the matrimonial con-

tract null and void. It is not every fear, however, that nullifies the marriage contract, but only such fear as is: (1) extrinsic, *i. e.*, whose cause is found in another person; (2) inflicted unjustly and with the purpose of forcing consent to marriage; (3) grave, either absolutely or relatively.

In order that fear may be considered absolutely grave, it must be such as would influence even a man of courage; but to judge whether fear is relatively grave, that is, whether it affects seriously any particular person, account must be taken not only of the danger that threatens, but also of the character of those who cause the fear and of the susceptibility of those against whom the threats are directed. Thus the fear in which subjects hold their superior, although it is reverential, may become grave, if it is augmented by threats, quarrels, vexations, etc. When the harm that threatens is inconsiderable or not imminent, it does not render the will incapable of resistance; hence the law does not regard such trifling fear, and presumes that no one would suffer compulsion therefrom.

In order to decide, then, whether the marriage of Titus was valid, we must examine into the qualities of the fear, which he alleges forced his consent. Even though it be granted that this fear continued up to the moment of his marriage, yet it is clear that the threats of ejection and disinheritance were neither unjust nor uttered with the purpose of forcing a marriage. The parents of Titus were entirely within their rights when they commanded him to break off his unlawful relationship with Sempronia. Their own honor, as well as the temporal and spiritual welfare of their son was at stake. The punishment they annexed to his disobedience was not unjust. Authorities differ as to whether parents are obliged from natural justice to will their possessions to their children. The dispositions of the civil law on this point are also

different: in some places (as in most of our States) the testator has full liberty to dispose of his property as he sees fit; in others, the law determines that a certain portion of the estate must be divided between the children. The wild and irresponsible life of Titus offered a just reason for his disinheritance; but if the law made him a necessary heir, then the threats to disinherit him were futile and could not have caused an efficacious fear. Either fear did not exist, or it was justly caused. Similar grave and sufficient reasons justified the threats of ejection.

But even though the threats were unjust, they would not suffice to render the marriage invalid, since they were not aimed, except indirectly, at extorting consent to marriage. The parents sought directly the reformation of their son, and, with this end in view, proposed to him the marriage with Gertrude. The threats were intended to draw him away from Sempronia, not to force him to marry Gertrude.

Moreover, the fear excited by these menaces was not very considerable. It appears that Titus was not a timid person and that he did not stand in excessive awe of his parents' displeasure; rather they seem to have feared him. The prospect of being thrown on his own resources was not very formidable to him, as it did not deter him only a year later when he abandoned wife and child for the sake of Sempronia. Nor would the amount of the fortune in question suffice to make the fear of its loss a grave fear. For if the parents were able to disinherit Titus, the loss of the fortune would mean the loss, not of a right, but of a reward; that is, the inheritance whose loss he feared would be a reward offered him on condition that he would amend his life. Now Canon Law does not regard the danger of losing that to which one has no right but which one hopes to obtain, as sufficient to intimidate a steadfast man;

since in such a case a person would be moved not so much by fear of loss as by hope of gain: hope, however, as St. Thomas teaches, does not diminish, but increases the voluntariness of an action. The fear felt by Titus because of his parents' threats was not serious, either relatively or absolutely.

The repugnance experienced by Titus when pronouncing his consent during the marriage ceremony is explained by his sinful attachment for Sempronia and his regret that he would now be obliged to give up the old life. His consent to the marriage with Gertrude was absolutely voluntary, though partially involuntary; just as the merchant who during a storm throws his wares into the sea in order to lighten the vessel, does this willingly, although not without regret.

Since, therefore, the fear that Titus experienced did not possess the qualities necessary to vitiate consent, it must be concluded that his marriage with Gertrude was valid.

XCI. PRESUMPTION OF LIFE OF A MISSING HUSBAND

Case.—Zenephon married when a very young man. In social condition Lita, his wife, was far below him. They lived a miserable life for a few months and then the husband, thinking he could no longer endure so unbearable an existence, deserted his wife and settled in the far West. After the lapse of ten years Lita engages to marry Cliopus. To the pastor she admits her prior marriage, informing him that she has never heard directly from her husband, but that once, some six years ago, she heard from a mutual friend that Zenephon had taken to drink, and then died of Bright's disease in a Western hospital.

Question.—What must be done?

Solution.—The case, like all cases involving the declaration of the existence of a true marriage, must be sent to the Matrimonial Court of the diocese, which court will then be charged with the duty of deciding whether the lady in question is free to enter into new espousals or not. No priest, however certain he may be of the status of such a case, can pass judgment on it. He may have his own convictions, but these do not entitle him to give a decision, or to act in the name of the Church in relation to a new marriage.

Lita must apply to this court and give satisfactory evidence that her husband is dead, and that therefore she is, before God, free to enter into a valid matrimonial contract with Cliopus. The statement made by the *mutual friend* may have been true or may not have been true. It may have not been founded on any personal knowledge of that *mutual friend,* but may have been the result of pure hearsay. It may have been uttered as the consequence of the

working of a lively imagination, or may have been a baseless fabrication begotten in a desire to please. It may be a fact, too, that the statement attributed to the *mutual friend* may never have been made; that the *mutual friend* had no real existence, for oftentimes it happens in such cases that the "wish is father to the thought." Lita will be called upon to produce the party who made the statement, and an examination will be conducted to ascertain the trustworthiness of the witness. It should not be difficult to trace the missing husband, since the time and place of his sickness were known. The state and hospital records can be searched, and they will afford sufficient evidence of his death if it has really occurred. This, of course, will take time, but it is absolutely necessary. Zenephon may not have died. He may have recovered, at least partially. There is no proof adduced that he really became a drunkard, and when we set forth the fact that he was a *young man* and in good health the day he deserted his wife, the presumption is in favor of the theory that he is still among the living and, therefore, that Lita is still his lawful wife. The burden of changing this presumption of life into the presumption of death rests upon her who aspires to the new nuptials. Without doubt by using the proper means she could find out many facts having an important bearing upon her matrimonial status. The Church goes slowly and carefully in such cases, for hers it is to safeguard the sacred indissolubility of the marriage bond against the self-interest, the emotions, and the passions of men. Lita must await the decision of the ecclesiastical court.

XCII. SPIRITUAL AFFINITY

Case.—Eugene a Catholic layman and professor, is godfather for Raymond, a young collegian, who is brought into the true Church through Eugene's efforts. Two years later Eulalie, the widowed mother of Raymond, also enters the fold through the influence of Eugene. The year following she accepts the proposal of her son's godfather to wed him. Her Baptism was unconditional as it was clearly proven she had never been baptized. The priest applies for a dispensation from the impediment of spiritual affinity but is told none is necessary. So he marries Eugene and Eulalie without the dispensation.

Question.—Is the marriage valid?

Solution.—It is beyond dispute that this impediment is of ecclesiastical origin only. The first traces of it are found in the Council of Trullo (692), then in the Council of Rome (721). The Council of Trent had in mind the abolition of this impediment, but in the end merely modified and restricted its extension. The foundation of the impediment is the Sacrament of regeneration, completed by Confirmation, whence arises the spiritual relationship analogous to the natural relationship begotten by generation. In accordance with the present-day legislation of the Church this impediment affects only those who come under the jurisdiction of the Church, and as this is accomplished by the reception of the Sacrament of Baptism, only the baptized meet the requirements for the development of this relationship. It is held to be absurd to admit a relationship in the spiritual order when one or both of the parties to the relationship have not yet been born into that order; that is, have not yet been

baptized. Where the relationship does not exist the impediment which it begets cannot exist. Hence in the case before us, when Eugene stood sponsor for the child of Eulalie by her first husband, he did not acquire the usual spiritual relationship, because Eulalie was not at that time under the jurisdiction of the Church, as she had not been baptized. It follows, then, that at that time there was no bar to the union of Eugene and Eulalie. But after the lapse of two years, Raymond's mother, now a widow, submits herself to the jurisdiction of the Church by voluntarily seeking and receiving the Sacrament of Baptism. The question that confronts us now is, does the spiritual relationship which did not exist between Eugene and Eulalie on the day of her son's baptism, spring into existence on the day of her own baptism by virtue of the baptism of Raymond? Does the relationship revive? On this point theologians are divided. Some are of the opinion that the impediment in question does not revive under the given conditions. They assert that this propinquity arises at the time of the baptism (Raymond's) or it does not arise at all. *Non firmatur tractu temporis, quod de jure ab initio non subsistit.* According to this opinion the contractng parties were validly married without a dispensation, since no impediment ever existed. According to the second opinion the relationship did arise *fundamentaliter* at the time of the child's baptism, but by reason of the presence of an *obex* it could not have its effects. The effect is the impediment. When, then, the *obex* was removed, by the baptism of the mother, the effect of the relationship was in full force, and the impediment would invalidate the marriage unless first removed by the necessary dispensation. Gasparri holds that this opinion "is not to be despised." All told, then, we must conclude that the existence of said impediment can be held to be doubtful. Since, however, a doubtful impediment is treated as non-existent, the parties

interested could be validly married without a dispensation. We think, nevertheless, that in practice a dispensation *ad cautelam* should have been obtained and thus all cause for anxiety removed.

Under the new Code of Canon Law the impediment of spiritual relationship arising from Baptism has been limited to the person baptized, the one baptizing and the sponsor or sponsors (Canon 768). Hence it does away with the relationship of the sponsors and the one baptizing to the parents of the baptized.

XCIII. THE IMPEDIMENT OF CRIME

Case.—Cassandra married some ten years ago. Her husband became a confirmed drunkard and did not support her. While in his cups he was very cruel to her, so she left him, and has not seen him for the past five years. She is now keeping house for her brother. Philos boards with her brother and is very much attached to the married lady. Recently he found that his affection was reciprocated and straightway he promised to marry Cassandra, whenever her husband's death would make her free to accept him. There has not been any question of violation of the obligations contracted by her marriage. She has just learned of the death of her husband who was accidentally drowned while bathing in the ocean.

Question.—Is Cassandra now free to marry Philos?

Solution.—The question asked is whether the impediment of crime has existence in the case quoted. Since she did not rid herself of her husband by conspiring to effect his death, which was brought about by circumstances over which she had no control, the solution of the case is greatly simplified. Again the absence of the factor of adultery removes all complication. We have to deal with a promise of marriage made during the existence of a valid marriage, which promise is conditioned by the continuance of said valid marriage. It looks as if the promise was a mere intention, externally expressed to marry when the law of God would permit both parties to contract a valid marriage. If so, no impediment of crime could possibly exist. Even if there existed more than an intention, a real, bona fide promise to marry when the ex-

isting impediment would no longer interfere with the contracting of a valid union before God, it is certain that no impediment was begotten by the promise. A promise of marriage, capable of begetting a diriment impediment of crime, must be *materially and formally injurious* to the welfare of the already existing union. In the absence of adultery and of all desire of conjugicide it can not be claimed that the marriage of Cassandra with her worthless spouse has suffered any material or formal injury. Hence the reasons that urged the Church to institute this impediment have no bearing on this case. The marriage with Philos would not of itself involve any scandal, and the promise by no means endangered the security and well being of the lady's prior union. Evidently there is no reason for punishment, which punishment in the decree of the Church takes the form of an impediment dirimating the new marriage when contracted without the proper dispensation. Briefly, then, we hold that there is no reason why these parties should not be validly married. Their marriage would serve to remove any proximate danger of sin arising from their living under the same roof, and likewise do away with a possible occasion of scandal springing from the same fact. (Noldin, Vol. III, N 611-c.)

XCIV. DISPENSATION FROM THE IMPEDIMENT OF CRIME

Case.—David and Lucilla were lawfully married in 1913, but they never lived together and the marriage was not consummated. David learned that Lucilla had been unfaithful to her marriage vows, and he obtained a divorce. Lucilla then married George, the co-respondent, before a civil magistrate. To this union several children were born. Subsequently George and Lucilla, repenting of their evil course of life, renewed their marriage consent before their parish priest, after a dispensation super matrimonio rato et non consummato had been granted, as David was still living.

Question:

1. What is the impediment of crime?
2. What is the law regarding dispensation from this impediment?
3. Was the marriage of George and Lucilla invalidated by the impediment of crime?

Solution:

1. The diriment impediment of crime arises in three cases: (a) between those who in order to marry have conspired against and murdered the husband or wife of one of the parties; (b) between those who have committed adultery together and also promised or attempted marriage, during the life time of the injured husband or wife; (c) between adulterers, one of whom murders the injured spouse in order to contract marriage with the partner in guilt.

2. Since this impediment was established by ecclesiastical law, the Church may always dispense from it. In case of public hom-

icide, however, it is never dispensed. When adultery has been joined with attempted marriage, the dispensation is granted only for grave reasons. The impediment is not incurred by infidels, but it holds if one of the parties is Christian. Whether ignorance of the impediment excuses is a disputed question, but the negative view is the more common. For while the impediment is intended as a punishment, the chief purpose of the Church is to remove the reason for such crimes by rendering the guilty ones disqualified for marriage. It can easily happen, though, that the impediment arising from adultery and attempted marriage be overlooked by those who, seeking to have their civil marriage validated, ask for a dispensation super matrimonio rato et non consummato, or a declaration of liberty on account of the presumed death of the former consort. Hence the Church, in order to prevent the danger of invalidity, has provided that in such cases the dispensation from the impediment of crime, so contracted, shall be considered as granted through the concession of the dispensation or declaration sought for. (S. C. Sacr. 3 Junii, 1912.) This decree is retroactive and grants the revalidation and sanation of any marriage that had for this reason been invalid before.

3. The first marriage of George and Lucilla was of course invalid. Moreover, it induced the impediment of crime. For from what was said in the first paragraph under (b) it follows that this impediment results when a divorced person contracts and consummates a civil union during the lifetime of the lawful spouse; so that even after the former husband or wife has died, the second marriage cannot be revalidated without a dispensation. However, the second marriage of George and Lucilla was valid. The dispensation granted them included the dispensation from the impediment of crime.

XCV. A CASE OF THE DECREE "NE TEMERE"

Case.—Henry, baptized a Catholic but brought up as a Presbyterian, wishes to marry Caja, a Catholic girl, and is willing to conform to the conditions imposed by the Church. The pastor of Caja commissions his assistant to perform the ceremony without dispensation, as Henry according to the decree *"Ne temere"* may be regarded as a Catholic, and therefore requires no dispensation. The assistant, however, does not agree with this view and refuses to perform the ceremony.

Question.—Which is right, the pastor or the assistant?

Solution:

1. The decree *"Ne temere"* deals with the ecclesiastical *form* required for the validity of the marriage, not with the ordinary impediments. Whether, therefore, apart from the essential form of the marriage, there exists an impediment to the marriage between Henry and Caja, is to be decided not according to the decree *"Ne temere,"* but according to the other ecclesiastical marriage laws that have remained in force.

2. The marriage between Henry and Caja comes under the Catholic Marriage form, not merely because Caja is a Catholic, but also because Henry, although *de facto* a non-Catholic, was baptized in the Church and is therefore numbered with those subject to the decisions of the decree *"Ne temere."*

3. Therefore the marriage of Henry and Caja is to be regarded as a mixed marriage, forbidden by the Church, and for its lawful contracting there is required, besides an important reason on the

part of Caja, also a dispensation. Despite his Catholic baptism Henry has been brought up entirely as a Presbyterian, and doubtless is numbered amongst the members of that denomination: this suffices to render the projected union a mixed marriage which is forbidden to a Catholic.

4. Caja's pastor, therefore, before performing this marriage must, with a statement of the reasons which make this union advisable, apply for dispensation and secure the required guarantee for the fulfilment of the prescribed conditions. The assistant was correct in refusing to undertake the ceremony under the circumstances.

XCVI. MARRIAGE BEFORE TWO WITNESSES

Case.—Xystus (baptized) and Petrina (never baptized) were married some years ago, without the necessary dispensations. A year ago the Ecclesiastical Court declared the union null and void. Petrina accepts this decision, but will not permit Xystus to petition for a divorce. He can marry if he chooses, she says. She will never molest him, but financial reasons render her obstinate in her refusal to give civil freedom to the man whom she was wont to call husband.

Xystus wishes to marry a Catholic lady, but as they cannot obtain the license, the pastor cannot, according to the civil law officiate without danger of imprisonment. After a year's fruitless argument with Petrina and with the pastor, Xystus takes his young lady to the church and there in the presence of two witnesses they exchange matrimonial consent in the absence of the pastor.

Question.—Is this marriage valid in the eyes of the Church?

Solution.—The marriage law of Pius X. demands the assistance of a competent priest for the validity of marriage. But an exception is made when a competent priest cannot be had, and this condition lasts for a month. The Sacred Congregation of the Sacraments (March 12th, 1910) gave an authentic interpretation of this clause. Marriage can be validly and lawfully contracted, before witnesses alone and without the presence of the competent priest, whenever the engaged parties can neither send for him nor go to him without *grave inconvenience,* and have already waited for a full month. According to Canon 1098 of the new Code the same privilege may be used whenever it can prudently be foreseen that within the space

of a month neither bishop nor pastor nor a delegated priest can be called or approached without serious inconvenience: "In mortis periculo validum et licitum est matrimonium contractum coram solis testibus et etiam extra mortis periculum, dummodo prudenter praevideatur cam rerum conditionem, scil. si haberi vel adiri nequeat sine gravi incommodo parochus aut loci ordinarius vel sacerdos delegatus, esse per mensem duraturam." This privilege can be made use of then whenever these two conditions are present, viz.: (1) grave inconvenience, (2) which has lasted for a month or more. Nothing is said concerning the nature of the inconvenience. The requirement is that it be grave and affect the engaged parties, or the priest, or both, whereby they are prevented from going to him or he is prevented from officiating. This applies to individual cases as well as to a general condition existing in some general locality or in some particular nation or nations. Where, then, the pastor, is prevented from assisting at a marriage of his subjects, by reason of the provisions of the civil code, that is when he cannot officiate without subjecting himself to severe penalties, such as imprisonment or fine, the condition of grave inconvenience exists and the privilege may be made use of to contract a valid marriage. It is true that the Congregation of the Council, July 27th, 1908, in answer to the question: "Should provision be made, for the case in which the civil law forbids the parish priest under heavy penalties to assist at a marriage before the civil ceremony, when such cannot take place and, nevertheless, the marriage is absolutely necessary for the salvation of souls?" replied *"there is no answer."* But this was anterior to the interpretation of March, 1910, by the Congregation of the Sacraments. Hence the refusal of the Congregation of the Council has no effect on the decision of 1910. Readily enough then it will be allowed that in the case of Xystus

there is a very grave inconvenience, a grave civic impediment, which makes it morally impossible for the pastor to assist at the new marriage. Of course the priest could assist and run the risk of punishment by the civil authorities, but he is in no way bound to do this in the present case. As this condition of affairs has lasted more than a month, it must be admitted that Xystus can *in foro ecclesiae,* contract a valid and licit marriage (provided no canonical impediment exists) in the presence of the two witnesses without the assistance of the pastor. (Cf. De Smet, Betrothment and Marriage, Vol. I, Note 69, sq.)

XCVII. CESSATION OF IMPEDIMENTS

Case.—Antonius marries a certain Sempronia, who before contracting this marriage had been sponsor at the baptism of Bertha, the illegitimate child of her friend Veronica. As the father of Bertha, Veronica had named one Titus, but in reality it was Antonius, so that between him and Sempronia there existed the impediment *ex cognatione spirituali* (*inter levantem levataeque patrem*).* For some time the two had lived in putative wedlock when Sempronia got knowledge of the real relation of Antonius and Bertha. Deeply chagrined but without suspicion of her invalid marriage, she told her trouble in confession to a missionary. She could not reproach her husband, she said, without bringing upon herself serious quarrels and other bad consequences. The confessor, although he is certain about the invalidity of the marriage, believes, from motives of pastoral prudence, that he should not enlighten Sempronia; for, on the one hand, he is obliged to leave town within an hour's time, and therefore cannot possibly conduct dispensation proceedings himself, on the other hand Sempronia, for the reasons given, would not be in a position to tell her husband of the invalidity of their marriage. Supported by Lehmkuhl (II. 11, n. 1054 and 1055), Göpfert (III., 6, n. 229 and 271) and Noldin, (*de usu matrimonii,* 11, n. 97) in the probable opinion that *in casu gravissimi incommodi* an *impedimentum juris mere ecclesiastici* ceases, he induces the penitent in a prudent way to a renewal of marriage consent, and absolves her with the encouragement: "Strive as

* Canon 768 of the new Code of Canon Law abolishes the relationship of the sponsors to the parents of the baptized.

much as possible to keep up a good understanding with your husband!"

Question.—Quid ad casum?

Solution.—The case is a very evident example of how occasionally the practical application of moral principles may and must soften the strict directions of Canon Law. A Canonist who would believe in carrying his principles to the last consequences, would be displeased at the missionary's action, whilst a Moralist might deal with him more leniently. The missionary relies upon Lehmkuhl, Göpfert and Noldin for his chosen procedure. Both the latter, however, refer to Lehmkuhl in this matter, so that really Lehmkuhl is the only authority holding this view. Almost all Moralists and Canonists treat this question: though most of them only in the so-called *casus perplexus,* when, namely, a diriment impediment to marriage is discovered immediately before the marriage ceremony, and there is no time to obtain the requisite dispensation. Lehmkuhl is probably the first one to apply this solution of the *casus perplexus* also to the *convalidatio matrimonii jam contracti.* At least I know of no other author who so extends it. Noldin, Göpfert, Wernz, Ballerini-Palmieri, who hold the same opinion, refer to Lehmkuhl and mention no other authority. Feije (*De impedimentis et dispensationibus matrimonialibus n.* 646), however, who treats very thoroughly this power of dispensation, says: *"Multo magis deberent rationes adductae valere pro impedimento post contractum matrimonium detecto et tempore celebrationis ignorato; hoc tamen fatentibus omnibus, non cessat."* Since therefore Lehmkuhl appears to lead in this matter, it will repay us to repeat here his views on the subject, as they are found in the eleventh edition.

"Quid faciendum confessario, si destitutus est facultate dispen-

sandi (super impedimento dirimente matrimonii ex jure ecclesiastico) neque ea jam haberi possit.

R. 1. *Si in bona fide est poenitens circa valorem matrimonii, plerumque expedit in bona fide eum relinquere, sed sub alio praetextu eum movere, ut post certum tempus ad confessionem apud ipsum illum confessarium redeat; interim quaerat confessarius facultatem dispensandi, ut redeunti possit totam rem exponere eumque statim habilem ad contrahendum verum matrimonium efficere."* In this probably all theologians agree. In practice it will be best to obtain at once the *sanatio in radice* because then no difficulties can arise concerning a renewal of the consent.

R. 2. *"Si poenitens scit matrimonii nullitatem evitare vero debitum conjugale aliquo praetextu, itinere, etc., impossible non est, quamquam cum difficultate conjunctum: debet id omnino fieri."* Since this solution often appears impossible Lehmkuhl continues:

R. 3. *"Si neque tam cito dispensatio obtineri potest neque evitari debitum conjugale sine urgente periculo gravissimi mali, ut diffamationis, scandali, etc., videtur lex ecclesiastica irritans cessare, ita ut nunc putativi conjuges habiles evadant ad efficiendum matrimonium validum . . . quamquam obligatio manet recurrendi statim ad legitimum superiorem, tum ut pro cautela certior fiat dispensatio, tum ut crimine admisso suscipiatur justa poena, et superioris mandato oboedientia praestetur . . ."*

Ut autem hujus responsi—quod legenti forte benignius videtur—breviter rationem dem; moveor auctoritate S. Alphonsi. St. Alphonsus and the early authors, however, speak merely of the *casus perplexus,* as already remarked. Lehmkuhl then continues: *"Sed ut meam promam sententiam—si in tali casu (ante matrimonium) lex probabiliter cessat, cur non idem dicamus in altero (post matrimonium invalide contractum) ubi similis, immo major necessitas*

graviusque damnum immineat?" It is of interest to note how the distinguished Jesuit Wernz expresses himself on this view in his great work *Jus Decretalium* (IV. *n.* 619, *nota* 87) *"Profecto haec doctrina probatorum auctorum, qua confessarius in istis augustiis declarare potest, impedimentum cessare, sed cum onere quodam saltem convenientiae legis post contractum matrimonium recurrendi ad Ordinarium vel S. Poenitentiariam, ut dispensatio ad cautelam obtineatur et executioni mandetur, per rationes intrinsecas difficulter probatur."*

It would indeed be difficult to give intrinsic, valid reasons for this opinion. Yet it has been attempted and in two different ways. First of all, many authorities, for instance Thomas Sanchez, who quotes more than twenty authors in support of his opinion, claims that the bishop, and also the priests delegated by him, can in cases of necessity set aside obstacles to marriage by dispensation, as in such a case a silent delegation of the Pope is present. The Pope, thus Sanchez holds, would in such a case certainly delegate his powers of dispensation to the bishop and priests, as otherwise great scandal and detriment would arise for the Church. In these days nearly all bishops possess in their Quinquennal faculties far-reaching, positive powers of dispensation, even in regard to diriment impediments; so that hardly a case may happen for which they could not grant the needed dispensation. In some dioceses the bishop permanently delegates this power to confessors for cases of necessity. A similar faculty, though only *pro matrimonio jam contracto,* is granted to all confessors in the so-called *Pagella S. Poenitentiariae.* Since this *Pagella,* which includes other most practical faculties, is readily given, all missionaries at least should secure it. It would enable them to solve easily many difficulties. If power of dispensation is expressly granted to bishop or priests,

then of course there is no difficulty. Whether, however, every confessor has in the case of need, to avoid scandal and harm, the power to dispense *eo ipso* from the canonical impediments, as Thomas Sanchez opines, is very problematical. I am unaware of any direct proof to support such view and probably there is none. For this reason other authorities, as for instance St. Alphonsus, teach that pastors and confessors cannot actually dispense in such cases of need, because this particular power is granted them neither *tacite* nor even in most cases *explicite,* but they can declare that the Church law concerning the impediment is to cease in such a case of need, because its observance would be very detrimental. Herewith the difficult question is opened whether a *lex irritans*—such as a diriment impediment ceases *in casu gravissimi incommodi.* D'Annibale who is not generally regarded as a rigorist, replies with a categorical "no." He says: *"Nullam epikiam recipiunt* (*leges irritantes*) *atque ideo nullum incommodum, ne gravissimum quidem ab eis servandis excusat"* (*Summula Theol. Mor.,* 3, I, 216). He claims for his support Thomas Sanchez, who explains the matter as follows: It is not actually the positive Church law that imposes so difficult a restriction, since no positive law, as such, obliges under conditions of great harm. This important restriction proceeds rather from the natural and the Divine law, which allow marital intercourse only between two persons who have contracted a legitimate marriage. The parties in the case, however, are unable to contract a legitimate marriage: consequently matter and form are lacking in such a sacramental union. In fact the claim that *in gravissimo incommodo* the *lex irritans* of impediments ceases, cannot generally be maintained. The *impedimentum ordinis* is manifestly only of an ecclesiastical nature, nevertheless a priest can never, not even upon his deathbed and despite utmost necessity,

enter into a valid marriage. Furthermore, what would we come to, if in cases of necessity an ecclesiastical *lex irritans* could readily be set aside? Would not arbitrariness be given full rein? St. Alphonsus gives as warrant for the cessation of a *lex irritans: "Cessat lex, quando potius est nociva, quam utilis. Et licet hic non cesset finis legis in communi, sed in particulari; cum tamen cessat finis legis in contrarium, lex etiam cessat, ut omnes conveniunt."* Of course, if this be correct without restriction, then we cannot see why a priest could not change an illegitimate union under certain conditions into a valid marriage. The circumstances might be such that the *lex ecclesiastica* is actually *nociva* and that the *finis legis in contrarium cessavit.*

From the above it must be plain that no intrinsic valid grounds are at hand either for the confessor's faculty to dispense, nor for the cessation of the *lex irritans impedimenti* in such a case of necessity. It is greatly to be desired that, like the far-reaching powers for dispensation granted by Leo XIII. and Pius X. for validating marriages on the deathbed, also powers of dispensation be granted for the *casus perplexus* and similar cases of necessity. Meantime, however, the views of St. Alphonsus, Lehmkuhl, Noldin, Gennari, Göpfert, Ballerini-Palmieri, etc. are to be accorded at least extrinsic probability. In the Acts of the South American Plenary Council, of 1899, approved by Leo XIII., the solution of the *casus perplexus* according to St. Alphonsus (*Theol. Mor. lib.* VI., n. 613) is recommended. This may be taken as an indication that the Roman Curia does not oppose the practical application of the view of St. Alphonsus.

Let us now attempt to solve the case in point. The missionary is not to be reproached on account of his mode of procedure, as he has followed the opinion of weighty authorities. It is true,

nevertheless, that all authorities require that after such solution of the case *ad cautelam* either the *sanatio in radice* or *simplex dispensatio* be obtained. But this demand is made as a matter of propriety rather than as a matter of necessity. Of course, most authorities let the above solution apply only to *impedimenta occulta* (such as *crimen,* or *affinitas ex copula illicita*) not however to impediments which according to their nature are public, although *de facto* secret. The *cognatio spiritualis* belongs by its nature to the public impediments, but Gennari rightly extends the above solution also to *"impedimenta materialiter publica, formaliter autem occulta."* The *cognatio spiritualis* is in the given case still secret, therefore, *formaliter occulta.* Though the missionary's mode of action is not open to censure, it is not to be commended. He contented himself with probabilities in a very important matter where the validity of the Sacrament of Matrimony stood in question. How easy it would have been to proceed much more securely and correctly! For instance, he might have told Sempronia to take up this matter with her confessor in her next confession, because the matter was very important and her confessor would undoubtedly help her. Should Sempronia refuse to do this, the missionary might have subsequently sought the *sanatio in radice* from the *Poenitentiaria* and thus have validated the invalid marriage. Indeed, all authorities recommend that at least *ad cautelam* recourse should be had subsequently to the proper authority. A missionary who is likely to meet with such cases ought to secure the *Pagella* of the *Poenitentiaria,* or even wider faculties. They will not be refused him by the competent authorities.

XCVIII. NOT SANATIO IN RADICE, BUT SILENTIUM

Case.—Caja had in the unmarried state by sinful intimacy with Cajus, a wealthy and respected citizen, borne him a daughter, Caroline. This has been kept a profound secret, and it never became known that Cajus was the father of Caroline.

Now Caroline married, *in forma ecclesiae consueta,* without having the slightest suspicion, her cousin Charles, the son of a brother of Cajus. The impediment of blood relationship of the second degree was not discovered; it was known only to Caja and Cajus, and these two kept silence. Indeed, Cajus, pleased at the idea of providing at the same time for his natural daughter and his nephew, presented to the young couple a house as a wedding-gift and intended to make them the heirs to all his property. Thus Charles and Caroline live together in the best of harmony, they have several children, and naturally think a great deal of "Uncle." Caja, however, is a victim of remorse, since through her fault her daughter is materially living in concubinage; but, she does not dare to proclaim the paternity of Cajus, lest she defame him and destroy moreover the happiness of the couple. Finally she makes the whole matter known to her confessor and asks his advice and assistance.

Question.—Quid faciendum?

Solution:

1. The confessor asks himself three questions and solves them as follows:

(a) Did Caja sin by not revealing at the right time the impediment of blood relationship?

Without doubt she sinned, *saltem objective.* Canonists and

Moralists agree that by reason of the banns of marriage all those who know of an obstacle to the marriage are strictly obliged, out of respect for the sacrament, from the natural duty of charity, and in obedience to the positive commandment of the Church, to reveal the obstacle in the proper manner. From this duty of manifestation not even the *secretum naturale* and *promissum* excuse. Only the seal of confession, professional secrecy, and the actual *secretum commissum,* or the danger of grave harm to one's self or one's family, releases from the obligation of revealing the existing obstacle (Wernz, *Jus Decretalium IV. n.* 143. Bucceroni *Theologia Moralis II. n.* 953). Had Caja before the marriage of her daughter taken the priest into her confidence, a defamation of Cajus need not have been feared. It could have been arranged to obtain secretly and without the knowledge of the contracting parties the requisite dispensation from the Holy See. The Canonists state explicitly that the petition for dispensation may be made by a third party (the parents of the bride, or the pastor). It is necessary, of course, in this case that the young couple after the dispensation has been obtained, accept it either expressly or tacitly, as the *acceptatio dispensationis* by those in whose favor it is obtained is required, as a rule, for the legality of the dispensation (St. Alphonsus, *Theol. Mor.; de matr.* n. 1145). But this acceptance by the young couple could in the present case be prudently carried out without disclosing Cajus' paternity to the bride; moreover the Holy See may under certain circumstances so remove an impediment to marriage that it does not require the *acceptatio dispensationis* on the part of those affected. Therefore Caja had every reason to feel remorse.

(b) Is Caja even now obliged to take steps that her daughter's illegal marriage be made valid?

Yes, she is under this obligation: *ratione peccati materialis,* for the marriage of Caroline to Charles is a continued material concubinage, through the fault of Caja, by her guilty silence, when she could and should have spoken *ex justitia et caritate.* Through her fault the supposed spouses are deprived of the graces and effects of the holy Sacrament; and, moreover, there is the ever-present danger that by some unforeseen accident the truth may come out, and then the happiness of this couple and of their children may be gone forever.

(c) What then is to be done to set this matter right? Caja has done well to confide the whole matter to her confessor before informing her daughter of the illegality of her marriage, or before declaring it so *in foro externo.* In either case scandal, danger and injury could hardly have been spared the couple. Under the circumstances the confessor can not direct Caja to take one step or the other, he may not even advise this. After the matter has gone so far there is only one remedy: the *sanatio in radice* to be petitioned from the Holy See. The four conditions under which *sanatio in radice* is granted by the Holy See (*Cf.* Wernz *IV. n.* 657-660) are present in this case: a real consent to marriage since the beginning, continuance of the consent, a purely ecclesiastical impediment, and, weighty reasons for a dispensation. The obtaining of the *sanatio* through a third party without the knowledge of the husband and wife is possible and legal: there is no other way in this case. Therefore the confessor considers himself in duty bound to adopt this means. He might make the matter easy for himself by following those Moralists who assert the principle: *Si impedimentum sit occultum et conjuges sint in bona fide, in ea sunt regulariter relinquendi* (Bucceroni *l. c. n.* 1034). But with Wernz his standpoint is that in view of the present practice of the

Holy See regarding the *sanatio in radice* it would be improper simply to decide: *dissimulandum, silendum. "Qua ratione certe peccata formalia impediuntur, at conjuges vivunt in concubinatu materiali carentque sacramento matrimonii et gratia sacramentali. Quae damna et tantorum bonorum privatio per dissimulationem non reparantur."* Thus Wernz *l. c. n.* 660. The confessor in this case actually proceeded then in presenting to the St. Poenitentiaria, in Caja's name, a full statement, and request for the *sanatio in radice* of the marriage between Charles and Caroline.

2. After about two weeks the answer came from the S. Poenitentiaria. But it was not the disposition he had expected. Upon the reverse side of his petition he found written: *"S. Poenitentiaria circa praemissa respondet silendum esse omnino et praefatos putatos conjuges relinquendos esse in bona fide."*

Therewith this case of conscience was solved in the simplest way imaginable. Caja was supremely happy and grateful to her confessor for having delivered her from her qualms of conscience. The matter was ended also as far as the confessor was concerned. But he wished to understand theoretically why Rome's answer had thus turned out. He figured it out as follows:

Had the Holy See perhaps, with the command to keep the matter secret, implicitly validated this marriage? This was not impossible. The *sanatio in radice* may be granted, and is often granted, without *executio* and *acceptatio* (Wernz *l. c. n.* 660, Noldin *Summa Theol. Mor.* III. n. 664, 5). In the present case an *executio* through Caja's confessor was impossible and an *acceptatio* difficult to procure. But if the Holy See thus granted the *sanatio,* then the confessor needed no further *mandatum* than to keep silence, and to impose the same upon Caja. Already in the early usage of the Church a legalization of invalidly contracted marriages was

known in the form of a *mandatum de silentio,* and there are Canonists who in this practice perceive the origin of the *sanatio in radice* (Wernz *l. c. n.* 654).

Nevertheless we do not consider that the answer of the S. P. in this case is to be understood as an implicit validation of the putative marriage. Since the confessor requested not a general validation of the putative marriage, but in *terminis* the *sanatio in radice,* it is not probable that the Holy See would have chosen an obscure and evasive form of answer. Decisive is the word *"putatos"* in the *Responsum* of the S. P. The *putatively married* are to be left in good faith, therefore they have not now become actually married.

The *sanatio* asked for was, therefore, not granted. Why not? There are possible here only suppositions. Perhaps the Holy See considered the mere lack of validity not as a *causa gravis* so long as the danger of formal sins or scandals remained excluded, through the good faith of the couple. The S. P. might indeed not consider the invalidity of the marriage as certain. Who can tell whether Caroline did not after all know of her actual parentage, and had perhaps obtained a dispensation before or after the ceremony? Illegitimate children often know more of their affairs than their mothers imagine. Perhaps Cajus himself secretly had the pastor put everything in order for the young couple, when his natural daughter became engaged to his nephew. Finally, it must be considered that consanguinity, even if due to illegitimate birth, is according to its nature a public impediment to marriage. Cajus' paternity thus far had been successfully kept a secret, but it may yet through some accident become known *in foro externo.* What then, if meantime the marriage between Charles and Caroline had been, secretly and without knowledge of even one of the parties, made valid? Then the now valid marriage would have to be de-

clared in *foro externo* as invalid, and husband and wife, not knowing of the validation of their marriage, might *optima fide* separate. In place of material concubinage there would then be material adultery—and there would be no longer a possibility of sanation. Which is preferable? Be that as it may; the case was satisfactorily solved for all concerned.

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